S. HRG. 101-322

NATIONAL INDIAN FOREST AND WOODLANDS ENHANCEMENT ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 1289

TO IMPROVE THE MANAGEMENT OF FORESTS AND WOODLANDS AND THE PRODUCTION OF FOREST RESOURCES ON INDIAN LANDS

OCTOBER 20, 1989
WASHINGTON, DC

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NATIONAL INDIAN FOREST AND WOODLANDS ENHANCEMENT ACT

FRIDAY, OCTOBER 20, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9 a.m., in Room 485, Russell Senate Office Building, Hon. John McCain (vice chairman of the committee) presiding.

Present: Senators McCain and Gorton.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Senator MCCAIN. I'm pleased to be here today for this hearing on S. 1289, the National Indian Forest and Woodlands Enhancement Act. S. 1289 will better define the Federal Government's role in the protection and management of forest and woodland resources on Indian trust lands.

Federal policy for the protection of most Indian natural resources is currently based upon a loose patchwork of varying and inconsistent laws and administrative practices. This has resulted in serious fluctuations in the levels of management provided to Indian forest lands and virtually no protection for Indian woodlands.

Long term planning and stable management are needed to protect the forest and woodland resources of the tribes. Unfortunately the Congress has never established explicit standards for the management of these valuable resources. This bill is intended to establish those standards and to begin to correct problems stemming from past mismanagement. There can be no doubt that tribal forests and woodland resources constitute an important economic and cultural asset.

Indian forests and woodlands comprise about 20 percent of the lands held in trust by the United States for Indians. Forests and woodland resources are among the most valuable resources of Indian tribes, not merely as a source of Indian employment but to support their way of life. They furnish timber and wood products, fish and wildlife, subsistence uses, tourism, outdoor recreation, water, soil and air conservation, support cultural and religious uses and contribute to the general health and welfare of the tribes.

Tribes generate in excess of $64 million per year in timber resources and employ thousands of people in commercial forestry activities. The production of timber and other forest products is important, but not all encompassing. Forests are vital to traditional

Indian cultural values because they provide places for religious ceremonies and for gathering native medicines and foods.

Firewood, berries, mosses, pinon nuts, acorns, syrups, herbs such as ginseng, and wild rice, are harvested in tribal forests for personal consumption and sale. On some reservations, sales of these commodities easily exceed the income derived from the sale of timber. Indian forests are multiple use forests in the fullest sense.

This bill is intended to ensure that these forests are managed in perpetuity on a sustained yield basis. There are 4.5 million commercial woodland acres. This compares to 5.6 million commercial timberland acres. None of the woodland acres are currently addressed within current Federal forest management plans. This bill will provide a statutory basis to begin to protect and manage the Indian woodland resources.

Woodland inventory information is lacking throughout Indian country. Current harvesting and land management is generally conducted without silvicultural direction or environmental awareness. The Bureau of Indian Affairs [BIA] estimates that $38.8 million of benefits are realized from Indian woodlands each year. Despite the obvious value of this trust asset, little or nothing has been done to protect it. This bill will correct this neglect.

Another major purpose of this bill is to remedy the astonishing lack of Indian employees engaged in the management of Indian forests and woodlands. For several years, the Federal Government has promoted a policy to increase the number of Indians employed in professional forest positions for management of Indian forestry programs. This policy is consistent with the policy of tribal self determination and tribal self governance.

However, of the 420 professional positions in Indian forestry programs, less than 11 percent are filled by Indians. This bill will provide an education assistance program which will attract Indian people into the forestry profession and increase the number of Indians in professional forestry positions.

Theft of timber is another continuing problem on Indian lands. This bill provides for an evaluation of the timber trespass problem by the Secretary of Interior and authorizes the establishment of penalties for violations of trespass law.

Last, this bill addresses a longstanding and sometimes controversial administrative practice. For many years, the BIA has made deductions from gross receipts generated from the sale of Indian timber and forest products. These fees are commonly referred to as administrative fee deductions. These deductions are actually tribal contributions to the management of Indian forest resources. This bill will establish a maximum limit on the administrative fee deduction of 10 percent of the gross sale receipts or the cost of forest management, whichever is less.

This bill does not address all of the issues and concerns which have been raised by tribes and others concerning Indian forestry programs. Fractionalized land ownership patterns remain a problem. Land records are not adequately maintained. Forest road networks are inadequate and timber sale contracts do not provide the flexibility desired.

While this bill does not even meet all of the known needs, it does provide a framework for Indian forest and woodland management.

Hopefully, it will also stimulate discussion which will result in constructive changes in the bill so that we may more fully meet the needs for an efficient and effective Indian forest and woodland management program.

It is long past the time when Congress should provide the Department of the Interior with clear direction in the management of these valuable trust assets. By doing so, we can prevent the reoccurrence of past mismanagement and ensure the future protection and productivity of Indian forests and woodlands. I look forward to hearing from our witnesses today and to receiving comments and recommendations on this bill during this session of Congress so we may move toward enactment of legislation in the second session.

[The text of S. 1289 follows:]

II

101ST CONGRESS
1ST SESSION

S. 1289

To improve the management of forests and woodlands and the production of forest resources on Indian lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JANUARY 3), 1989

Mr. MCCAIN (for himself, Mr. INOUYE, Mr. MURKOWSKI, Mr. COCHRAN, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To improve the management of forests and woodlands and the production of forest resources on Indian lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Indian Forest and Woodland Enhancement Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—ADMINISTRATIVE PROVISIONS

Sec. 101. Findings.
Sec. 102. Purposes.
Sec. 103. Definitions.

TITLE II—FOREST AND WOODLAND ENHANCEMENT

Sec. 201. Management of commercial forests and woodlands.
Sec. 202. Administrative fee withholding.
Sec. 203. Forest and woodland trespass.

TITLE III—INDIAN FORESTRY EDUCATION ASSISTANCE PROGRAM

Sec. 301. Establishment of Indian Forestry Education Assistance Program.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorization of appropriations.

TITLE I—ADMINISTRATIVE PROVISIONS

SEC. 101. FINDINGS.

(a) FINDINGS.—The Congress finds and declares that—

(1) the forests and woodlands of Indians—

(A) are among their most valuable resources;

(B) furnish timber and wood products, fish and wildlife, subsistence uses, tourism, outdoor recreation, and water;

(C) provide for soil and air conservation, minerals, cultural, religious, and traditional values; and

(D) contribute to the general health and welfare of Indian tribes;

(2) Indian forest lands encompass more than 15,700,000 acres, comprised of approximately 5,600,000 acres of commercial forest land and 4,500,000 acres of commercial woodland which constitutes a major economic resource of Indian tribes;

(3) Indian forests and woodlands are renewable, manageable resources;

(4) the United States has a trust responsibility to protect, conserve, utilize and enhance Indian forests and woodlands consistent with its fiduciary obligation and its unique relationship with Indian tribes;

(5) increased investment in intensive management of Indian forests and woodlands will produce increased economic returns to Indian tribes and the United States;

(6) increased productivity of Indian forests and woodlands will enhance Indian self-determination, promote employment opportunities, and improve the social and economic position of Indian and surrounding communities;

(7) enhancing and ensuring further Federal and tribal investment in Indian forests and woodlands will improve the economic and social development of Indian Tribes and provide substantial benefits to tribal and national economies;

(8) Federal investments in and management of Indian forests and woodlands are substantially below the level of investments in and management of the National Forest Service and Bureau of Land Management

forests and woodlands and private forests and woodlands;

(9) existing Federal statutes do not sufficiently assure the adequate and necessary trust management of Indian forests and woodlands;

(10) of approximately 420 professional forester positions in the Bureau of Indian Affairs and tribal forestry programs, only 11 percent are held by Indians; and

(11) in the last 10 years more than 7,000,000 board feet of forest and woodland products have been removed illegally from Indian forest lands and woodlands.

SEC. 102. PURPOSES.

The purposes of this Act are to—

(1) safeguard the investments made in Indian forest and woodland management and provide additional assurances of adequate, stable, and secure funding for the protection, conservation, utilization, and enhancement of Indian forest and woodland resources;

(2) meet the trust responsibility and fiduciary obligation of the United States to ensure that the management of Indian forest lands and woodlands and related renewable resources will be managed in a manner consistent with sustained yield principles and serve the needs of Indians and other citizens of the United

States for the many products, benefits and services obtained from Indian forest lands and woodlands;

(3) increase the number of professional Indian foresters employed in tribal and Federal forestry programs on Indian lands and provide for improved management of Indian forest and woodland resources;

(4) promote tribal self-determination and self-sufficiency; and

(5) provide the Secretary the authority necessary to curb the occurrence of trespass in Indian forest lands and woodlands.

SEC. 103. DEFINITIONS.

For the purposes of this Act—

(1) the term "commercial forest land" means Indian land that is forest land capable of bearing merchantable forest products, currently or prospectively accessible, and not withdrawn from such use;

(2) the term "commercial forest land and woodland" means commercial forest land and commercial woodland;

(3) the term "commercial woodland" means Indian land that is woodland capable of bearing merchantable woodland products, currently or prospectively accessible, not withdrawn from such use, and not in-

cluded in the commercial or noncommercial timberland base;

(4) the term "forest or woodland management activities" means all activities, including all aspects of program administration such as budgeting, performance appraisal, reporting, personnel matters, bookkeeping and time and attendance, done in support of the management of forest land or woodland, including—

(A) preparation of forest and woodland inventory and management plans, including aerial photography, mapping, field forest and woodland management inventories, reinventories, growth studies, allowable annual cut calculations, and all aspects of the development, preparation, and revision of multiple-use forest and woodland management plans, including inventory analysis, environmental assessment, and forest history;

(B) forest and woodland development, including reforestation and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest or woodland environment;

(C) protection against fire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of fire-

breaks, hazard reduction, and performance of cooperative fire protection agreements;

(D) protection against insects and diseases, including all aspects of detection and evaluation, preparation of project proposals to secure funding (including project description, environmental assessments and statements, and cost-benefit analysis), field suppression operations, and reporting;

(E) assessment of damage caused by trespass or fire, including field examination and survey, damage appraisal, preparation of reports, assisting in investigations, writing demand letters, and giving testimony;

(F) administration and supervision of timber sales, including all aspects of sale and contract preparation such as cruising, silvicultural prescriptions, appraisal, advertising, executing and supervising contracts, marking and scaling timber, and collecting, recording, and distributing stumpage receipts;

(G) issuance of forest and woodland product permits, including cruising, product marking, stumpage appraisal, permit preparation, and harvest supervision for both paid and free use permits

to harvest sawlogs, firewood, house logs, posts and poles, Christmas trees and other products;

(H) consultation with Indian enterprises in forest land and woodland management and in the primary and secondary processing of forest products and woodland products, including stumpage appraisal, sale negotiation, contract supervision, disputes and appeals, economic analysis of potential enterprises, product marketing and business development activities; and

(I) provision of financial assistance for education of Indians enrolled in accredited programs of post-secondary forestry and forestry-related fields of study, including the giving of scholarships, internships, relocation assistance and other forms of assistance to cover educational expenses;

(5) the term "forest and woodland resources" means all the benefits derived from commercial forest land and commercial woodland, including forest products, woodland products, soil productivity, water, fisheries, wildlife, recreation, aesthetic and other traditional values of forest lands and woodlands;

(6) the term "forest and woodland trespass" means the act of removing forest products or woodland

products illegally from commercial forest land or commercial woodland;

(7) the term "forest land" means land that is considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken;

(8) the term "forest product" means—

(A) timber;

(B) a timber product, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, and split products;

(C) bark;

(D) a Christmas tree;

(E) other marketable material authorized for removal; and

(F) gravel which is extracted from and utilized on forests or woodlands;

(9) the term "forest and woodland products" means forest product and woodland products;

(10) the term "Indian" means a member of an Indian tribe;

(11) the term "Indian land" means land that is—

(A) held in trust by the United States for an Indian or Indian tribe; or

(B) owned by an Indian or Indian tribe and is subject to restrictions against alienation;

(12) the term "Indian tribe" means—

(A) an Indian tribe, band, nation, rancheria, pueblo, colony, or community; and

(B) an Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629e),

that is recognized by the United States as eligible for the special programs and services provided by the Secretary to Indians or Alaska Natives because of their status as Indians or Alaska Natives;

(13) the term "Indian enterprise" means an enterprise—

(A) which—

(i) is engaged in construction (within the meaning of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and is entirely owned by Indians, or Indian tribes, that receive 100 percent of the profits of the enterprise, or

(ii) is engaged in any business other than construction and at least 51 percent of the enterprise is owned by Indians, or Indian tribes, that receive not less than 51 percent of the profits of the enterprise; or

(B) which—

(i) is entirely owned by an Indian tribe, or

(ii) has an Indian owner who—

(I) acts as the chief executive officer of the enterprise, and

(II) has the experience and training to manage, and does in fact manage, the day-to-day activities of the enterprise;

(14) the term "landowner" means, with respect to Indian land on which a forest product or woodland product is produced, the Indian or Indian tribe that—

(A) owns such land, or

(B) is the beneficiary of the trust under which such land is held by the United States;

(15) the term "Secretary" means the Secretary of the Interior or the Secretary's delegate;

(16) the term "woodland" means—

(A) a plant community in which trees, often small and characteristically short-boled relative to their depth of crown, are present but form only an open canopy, the intervening areas being occupied by lower vegetation, commonly grass; and

(B) moderate-to-densely stocked pinyon-juniper; and

(17) the term "woodland product" means firewood, posts, poles, Christmas trees, stays, branches, berries, mosses, pinyon nuts, acorns, syrups, wild rice, herbs and other marketable materials authorized for removal.

TITLE II—FOREST AND WOODLAND ENHANCEMENT

SEC. 201. MANAGEMENT OF COMMERCIAL FORESTS AND WOODLANDS.

The Secretary shall manage commercial forest lands and woodlands, either directly or through self-determination contracts and grants under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450–458e), with the following objectives:

(1) development, maintenance, and enhancement of commercial forest lands and woodlands in a perpetually productive state by providing effective management and protection through the application of sound

silvicultural and economic principles to the reforestation, growth, and harvesting of forest and woodland products, including adequate provision for new forest and woodland growth as old growth is removed;

(2) regulation of commercial forest lands and woodlands through the establishment and development of forest and woodland product marketing programs supported by—

(A) written tribal objectives; and

(B) long-range multiple-use plans that incorporate sound forest and woodland management practices;

(3) regulation of commercial forest lands and commercial woodlands in a manner that will ensure the use of good method and order in harvesting the tree capital, so as to make possible continuous production and perpetual forest and woodland business;

(4) development of commercial forest lands and woodlands by Indians to promote self-sustaining communities, so that Indians may receive from their property not only the stumpage value, but also the benefit of all of the labor and profit the property is capable of yielding;

(5) sale of forest and woodland products on the open market when and only when the quantity of such

products available for harvest exceeds the quantity harvested by the landowner;

(6) preservation of commercial forest lands and woodlands in their natural state when authorized Indian representatives determine that the recreational, cultural, aesthetic, or traditional values of the forests or woodlands represent the highest and best use of the land to the Indians;

(7) management and protection of forest and woodland resources to retain the beneficial effects to Indian trust lands of regulating water runoff and minimizing soil erosion; and

(8) management and protection of commercial forest lands and woodlands to maintain and improve timber productivity, grazing, wildlife, fisheries, recreation, and aesthetic, cultural, and other traditional values.

SEC. 202. ADMINISTRATIVE FEE DEDUCTION.

Notwithstanding the provisions of 25 U.S.C. 413, the Secretary shall withhold a reasonable deduction from the gross proceeds of sales of Indian forest and woodland products to cover in whole or in part the cost of timber sale administration or forest regeneration. Such deduction shall not exceed the lesser amount of 10 per centum or the percentage of gross proceeds currently collected as forest management

deductions by the Secretary on sales of Indian forest and woodland products, unless the recognized tribal government consents to an increase in the deduction. Such deductions shall be fully expended by the Secretary in forest or woodland management activities in the reservation from which such deductions are withheld. The full amount of administrative deductions collected by the Secretary for a reservation shall be made available to that reservation's recognized tribal government by contract or agreement for the purpose of performing the forest or woodland management activities under this Act. Such deductions are not intended to cover the costs that are paid from funds appropriated specifically for fire suppression or pest control.

SEC. 203. FOREST AND WOODLAND TRESPASS.

(a) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations that—

(1) establish penalties for the commission of forest and woodland trespass, which provide for—

(i) collection of the value of the products illegally removed plus a penalty of double their value; and

(ii) collection of the costs associated with damage to the forest or woodland caused by the act of trespass;

(2) designate the agency officials who will be responsible for detecting forest and woodland trespass and assessing and collecting penalties; and

(3) set forth procedures for the assessment and collection of such penalties.

(b) RESTITUTION TO LANDOWNER.—The proceeds of penalties collected under subsection (a) shall be treated as proceeds from the sale of forest and woodland products.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Congress a report that—

(1) describes and evaluates the nature and extent of forest and woodland trespass that is occurring; and

(2) describes any legal or practical impediments to the curbing of forest and woodland trespass and the enforcement of the regulations issued to subsection (a).

TITLE III—INDIAN FORESTRY EDUCATION ASSISTANCE PROGRAMS

SEC. 301. ESTABLISHMENT OF INDIAN FORESTRY EDUCATION ASSISTANCE PROGRAMS.

(a) FORESTER INTERN PROGRAM.—(1) The Secretary shall establish and maintain in the Bureau of Indian Affairs at least 10 salaried forester intern positions for Indian students.

(2) For purposes of this subsection, the term "forester intern" means an Indian who—

(A) is pursuing a bachelor's degree or post-graduate degree in forestry or a forestry-related field, and

(B) is appointed to one of the positions established under paragraph (1).

(3) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an approved post-secondary school in a full-time forestry-related curriculum.

(4) A forester intern shall be required to enter into an obligated service agreement to serve as a professional forester with either the Bureau of Indian Affairs or a tribal government for 2 years for each year of education for which the Secretary pays the intern's educational costs under paragraph (3).

(5) A forester intern shall be required to report for service with the Bureau of Indian Affairs during any break in attendance at school of more than 3 weeks' duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement.

(b) COOPERATIVE EDUCATION PROGRAM.—(1) The Secretary shall maintain, through the Bureau of Indian Affairs, a cooperative education program for the purpose of recruiting promising Indian students who are enrolled in sec-

ondary or post-secondary schools for employment as a professional forester in the Bureau of Indian Affairs.

(2) The cooperative educational program that is to be maintained under paragraph (1) shall be modeled on, and shall have essentially the same features of, the program operated on the date of enactment of this Act pursuant to chapter 308 of the Federal Personnel Manual issued by the Office of Personnel Management.

(3) Under the cooperative agreement program that is to be maintained under paragraph (1), the Secretary, shall pay all costs for tuition, books, and fees of a student who—

(A) is enrolled in a course of study at an educational institution with which the Secretary has entered into a cooperative agreement; and

(B) is interested in a career with the Bureau of Indian Affairs in the management of commercial forest land and woodland.

(4) Financial need shall not be a requirement to receive assistance under the cooperative agreement program that is to be maintained under subsection (a).

(c) SCHOLARSHIP PROGRAM.—(1) The Secretary is authorized to grant forestry scholarships to Indians enrolled as full-time students in schools with accredited programs for post-secondary forestry and forestry-related programs of study.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment, following completion of the recipient's course of study, with—

(A) the Bureau of Indian Affairs;

(B) a forestry program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450–450n); or

(C) an Indian enterprise engaged in a forestry or forestry-related business.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited institution.

(d) ADEQUACY OF PROGRAMS.—The Secretary shall administer the programs described in this section until a sufficient number of Indians are trained to ensure that there is an adequate number of qualified, professional Indian foresters to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for Indian tribes.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 1990 and each fiscal year thereafter such sums as are necessary to carry out this Act.

In order to allow for the full development of the record, I'm directing that the record of this hearing remain open for 30 days. All interested parties should feel free to submit their comments for the record. I would like to ask the first panel to come forward, please. The Honorable Patrick Hayes, the Acting Deputy Assistant Secretary for Indian Affairs, Mr. Lawrence Waukau, Treasurer of the Intertribal Timber Council, Warm Springs, OR. Please come forward.

Please feel free to summarize your statement, if you so choose. We'll be glad to make your complete statement a part of the record, and sir, did I pronounce your name correctly?

Mr. WAUKAU. It's Waukau.

Senator MCCAIN. Waukau. Thank you, Mr. Waukau.

Please go ahead, Mr. Hayes.

STATEMENT OF HON. PATRICK HAYES, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY CARL JOHNSON, ACTING CHIEF FORESTER, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF INTERIOR

Mr. HAYES. Good morning, Mr. Chairman. I am pleased to be here so that I may present the views of the Department of the Interior on S. 1289, the National Indian Forest and Woodland Act. I have a prepared statement that I would like to have submitted for the record and ask that I be permitted to summarize my testimony.

I am accompanied today by Carl Johnson who is our Acting Chief Forester and ask that he be permitted to join me at the table at some appropriate time so that he may assist me in responding to the Chairman's questions.

Senator MCCAIN. He may come forward at this time, please.

Mr. HAYES. Mr. Chairman, we recommend enactment of S. 1289 with the amendments described in my prepared statement. I believe some baseline data and background information would be helpful. The BIA Forestry Program formally began in June 1910 with the Congressional appropriation of $100,000. Supervision of logging activities and forest protection were the primary duties of the early foresters. Today, the forestry program has grown from a sanitation, salvage type management to intensive management utilizing state-of-the-art forestry technology.

The current forest land base consists of 15.7 million acres of forest land comprised of 5.6 million acres of commercial timberland and 4.5 million acres of commercial woodland. The total growing stock in 1989 equalled 44.7 billion board feet with the biological, administrative, allowable annual cut equalling 994 million board feet.

In 1988 the volume harvested from Indian lands exceeded 835 million board feet for a total value exceeding $72 million. The total economic benefits derived from the management of Indian forests exceed $400 million with both Indians and non-Indians benefitting. Currently, Indians harvest over 58 percent of the forest products removed from Indian lands with 33 percent of the total harvest being processed through Indian owned mills.

Indian forest resources and the economic benefits derived from their use and development both on and off Indian reservations are

of major concern to Indian tribes and the BIA. This bill, if fully incorporating our recommendations, would go a long way in promoting Indian self determination and economic self-sufficiency for Indian tribes.

The Indian Reorganization Act of 1934 instituted the requirement that Indian forests under the Act be managed under the principles of sustained yield. Since enactment of that major legislation, additional changes and modifications to sustained yield management have occurred only a few times, principally in 1944 and again in 1964. Although the principles of sustained yield forest management have remained unchanged, products from forests have evolved plus we have witnessed advances in marketing and forest technology.

Harvest methods have improved. There is better utilization of harvested materials and there have been many advances in forest development. Indian tribes own and operate state of the art forest products, manufacturing enterprises and compete in world markets with various forest products. The BIA and the tribes have over the years taken on the additional workload and expense of an increasingly more sophisticated forestry program. Because opportunities to improve the forestry program occur infrequently, we view this as a rare privilege to provide extensive comments on the proposed bill and to offer recommendations that we believe incorporate all of the BIA's and the tribes 'Indian forestry program goals and objectives.

We believe that legislation to improve the management of forest resources on Indian lands should address these elements. There should be specified BIA responsibility and authority to manage all Indian forest lands to include both timberland and woodland, that timber sale administrative deductions and procedures should be set by statute, not by total Secretarial discretion. There should be a provision for authorization for direct payment of timber sale proceeds to Indian recipients.

There should be authorized an Indian forestry educational and training assistance program. Integrated resource management principles and forest resource planning and field activities should be required. There needs to be an evaluation of the trespass problem on Indian lands and direction to find appropriate remedies.

These elements are taken from the Intertribal Timber Council Vision 2000 Report which lists the forestry program objectives and goals that ITC member tribes are working to attain by the year 2000. The workshop that developed the report was a joint ITC and Bureau of Forestry effort and these are the common goals for both participants.

We would be pleased to submit a copy of that report and I would ask that it be made a part of the record if you so choose. All of the provisions of S. 1289 are commendable. However, we believe some stop short of fully resolving the forestry issues being addressed. A section-by-section analysis of the bill along with our suggested amendments is found in my prepared testimony. I would like to emphasize a couple of the points however.

First, under section 103 which provides the definitions for terms to be used for the purposes of this Act, the definitions are taken essentially from 25 CFR 163.1 and the Native American Woodland

Resources National Overview Report. Some are archaic and no longer used as defined in this bill. Some are redundant. Others are worded in a manner that could give rise to misinterpretation. We would be pleased if the committee staff worked with BIA forestry personnel and tribal representatives to arrive at agreed upon modern forestry terms and definitions.

Second, section 201 states that only commercial forest lands and woodlands will be managed. This bill language is too restrictive because the Secretary has a trust responsibility to manage and protect in varying degrees all Indian forest lands and not just commercial lands. The intensity of the management effort is proportional to the value of the forest resources and to tribal objectives. Somewhat related is section 201(8) which implies as does 25 CFR 163.3(h) that management and protection of Indian forest lands include other forest resource values plus recreation, aesthetic, cultural and other traditional values.

This is termed integrated resource management and is an ITC Vision 2000 report high-priority goal. We suggest this be amended to clearly state that integrated resource management planning is a forestry program management objective.

Third, section 202 directs the Secretary to limit the fee deduction. This goes a long way towards resolving a longstanding issue with Indian tribes. To prevent misinterpretation, we recommend that 25 U.S.C. 413 be formally amended by the bill. The Indian tribes feel the Secretary should not have wide ranging discretion concerning the setting of administrative fee amounts. We agree.

A very important aspect of section 202 is that it is silent about fees generated where no formal tribal forestry program exists. In such cases, the Secretary should be directed to use the fees collected for forestry purposes on lands where they were first generated with any surpluses used elsewhere in the Indian forestry program. Amending 25 U.S.C. 413 to prevent any of these fees generated or collected from being covered into the U.S. Treasury will clarify this point.

Fourth, section 203 directs the Secretary within 180 days of enactment to evaluate the extent of the problem on Indian forest lands, promulgate regulations for trespass including penalties, collection of costs, assessments and the like and provide a report to Congress outlining the nature and extent of the trespass problem on Indian lands including legal or practical impediments to the resolution of this problem.

The timeframe to prepare a report and promulgate Federal regulations addressing the Indian trespass problem is not realistic. We recommend a minimum of 1 year to accomplish these tasks. Also, this bill presents an opportunity to address the Department of the Interior's general trespass problem. Indian lands often adjoin other lands administered by the Department, principally run by the Bureau of Land Management. Because the trespass problem is universal to all land managers, we recommend that S. 1289 be amended to provide that the report be coordinated with other agencies within the Department of the Interior.

Fifth, in title 3, we strongly support the intern cooperative education and scholarship programs and feel they will be a positive force in promoting Indian self determination. We believe that the

cooperative education program should also include an obligated service requirement to make it comparable to the forester intern and scholarship programs. The BIA currently administers similar education programs to train and educate qualified Indian students in natural resources through cooperative programs and workshops with Haskell Indian Junior College and with direct financial assistance. We plan to increase our efforts in this area by better utilizing the educational resources already available within the BIA.

The educational provisions in S. 1289 will hopefully complement our efforts to attract qualified Indian students to manage the forestry programs maintained by the BIA or by the tribes. I again want to thank the committee and particularly Senator McCain, sir, for introducing this bill. BIA staff and resources are ready and eager to provide assistance, advice and further information that will contribute to the passage of comprehensive Indian forestry legislation to improve management of forest resources on Indian lands.

This concludes my prepared statement. I will be pleased to respond to any questions the committee may have.

[Prepared statement of Mr. Hayes appears in appendix.]

Senator MCCAIN. Thank you, Mr. Hayes. I'd like to hear from Mr. Waukau and then we'll have questions. Thank you.

Please proceed and, as I mentioned, please feel free to summarize your testimony if you so choose.

STATEMENT OF LAWRENCE WAUKAU, TREASURER, INTERTRIBAL TIMBER COUNCIL

Mr. WAUKAU. Thank you. Mr. Chairman, I am Lawrence Waukau for the Menominee Tribe. As Secretary Treasurer of the Intertribal Timber Council, I am pleased to be here today for the ITC. Unfortunately, our president, Mr. Fred Matt, was unable to make it today. However, he sends his best regards. On behalf of the 62 tribes and Alaskan Native Corporation members of the Intertribal Timber Council, I appreciate the opportunity to appear before you today to testify on S. 1289, the National Indian Forestry and Woodlands Enhancement Act.

Mr. Chairman, the Intertribal Timber Council supports S. 1289 with a number of recommendations which we believe could strengthen the bill. The simple fact of the matter is that our forests need this bill. Our forests are vital assets that require intensive management through an active trust stewardship.

There is no question that the Federal Government has a trust obligation to manage and protect our forests. The trust obligation is implicit in a Federal statute requiring the sustained yield management of Indian forests. The U.S. Supreme Court has stated there is a trust relationship. The administration has acknowledged a trust by creating a substantial forestry program and attendant regulations. The Congress has regularly provided the necessary appropriations.

However, Federal statutes have not kept pace. The last significant law addressing Indian forestry was passed in 1934 which provided that our forests be managed for sustained yield. The only laws prior to that were enacted in 1910 and they simply authorized

the harvest of our forests. In total, these laws might cover 1½ pages. As a result, there is almost no programmatic guidance for Indian forestry and Federal law and for the authority to expend appropriations.

The current BIA forestry program must rely on the general authority of the Snyder Act to operate the program. With few authorizing laws and the Snyder Act so vague, the forest program is open to substantial alterations or reductions and there are no fine, fixed standards for which the Bureau is statutorily obligated to manage our forests. As a result of there being no statutory direction, the forestry program and the condition of our forests waxes and wanes according to the climate of the times and right now the condition of our forests is declining.

The operations of the forestry program simply has not kept up with the increasing management requirements or inflation. Flat budgets are increasingly gobbled up by our Federal pay increases. Added Federal management requirements such as archaeological and environmental compliances are taking up more and more time of the limited forestry staff. The inadequate staff is also unable to produce the more detailed forest management plans required by the increasingly sophisticated wood products market and the growing multiple use demands being placed on our forest resources.

So the management level of our forests is generally declining. Fewer and fewer people are being asked to do more and more jobs. The tribes have been regularly contributing significant amounts to help make up the difference. In fact, tribes contribute between 25 and 50 percent of the cost of operating our forests. We recognize we have a significant part to play in the management of our forests. However, the tribes have limited resources and other obligations. We cannot nor should we spend ever increasing amounts of our funds to make up for the shortcomings of our trustee.

So this legislation is necessary to both provide a better statutory framework for securing the forestry programs and to reemphasize the trust objectives of the forestry program and refocus the Federal Government's attention on meeting them.

I should now like to turn my comments to S. 1289 itself. However, before discussing our particular recommendations to the bill, I would like to note that the concept of S. 1289 is fairly unique. Instead of authorizing a series of specific programs for the trust protection and management of our forests, S. 1289 sets out objectives by which the forests are to be managed. There is no direct mention of any forestry program itself. Rather, a forestry program and its particular components are implicit in the directive of the Secretary to meet these objectives.

For the sake of time, Mr. Chairman, I will now discuss only the principal recommendations that the Intertribal Timber Council has for S. 1289. My written statement contains a more detailed examination. First, our recommendation is that the expression, "forest land" be used throughout the bill except when specific subcategories of forest lands are being discussed. The BIA has an official classification system for forest lands and the term, "forest land" includes commercial and non-commercial timberlands and woodlands. So forest land is the more encompassing term, technically correct and much easier to use throughout the bill. More impor-

tantly, it makes particularly clear that the BIA trust responsibility extends to the entire forest and not just some of its subcategories.

Second, the forest management must be added to both the findings and the purposes. Although management is extensively examined further on in the bill, it is not presently included in either of the first two sections as a principal component of the BIA's trust. It must therefore be added.

Third, the practice of integrated resource management planning must be added to the bill both in the definitions of forest and woodland management activity and the objectives set forth in section 201. Integrated resource management planning, or IRMP, is the current practice of what has been called multiple use. IRMP enhances and embraces the idea that our forests are being used for a broad diversity of purposes beyond just the harvest and regrowth of merchantable timber and that such various uses must be planned for in a harmonized fashion. Simply, IRMP is a necessary practice in modern forest management and so should be recognized.

Fourth, Bureau participation in developing and maintaining forest roads should also be included in the definition of forest and woodland management activities. A good system of extended season roads is vital to the trust protection of the forest resources as well as enabling expanded economic benefits.

Fifth, in applying the administrative fee deduction to forest products in section 202, the word, "unmanufactured" should be added before forest products. Presently the administrative deduction is collected by the BIA out of the receipts for the standing timber that is to be harvested. If that deduction, which ranges up to 10 percent of the gross receipts, were to be applied to lumber or plywood, tribal mills or plants would be rendered unprofitable. By adding "unmanufactured" to the bill, the current practice will be preserved.

Sixth, in the education section of the bill, we recommend that the authority be given to the BIA to pay off the outstanding student loans of Indian foresters who have already graduated in exchange for their working on either Bureau or tribal forestry programs. This bill would provide one more tool in trying to bring more Indian foresters into the practice of Indian forestry.

Seventh, in section 401, we are asking that the appropriations in the amount of $65 million be authorized annually through fiscal year 1995 and that such sums not less than that be authorized for future years. Although actual funds may not be appropriated in that amount, we believe that amount, based on the BIA analyses, reflects the current needs of the BIA forestry programs and so should be specifically stated.

Eighth, we recommend that a new section be added to the end of the bill authorizing a comprehensive and independent nationwide assessment of tribal forests and the BIA forestry programs. Such an assessment, we estimate, would take 2 years at a cost of about $225,000 per year. It is needed to provide some form of neutral monitoring of the BIA and tribal forestry efforts. In addition, we hope that the new independent assessment section would provide for reviews every 10 years so that a baseline could be established and then used to determine how the programs are doing in future years.

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This concludes my statement. I would be happy to answer any questions you have. The ITC appreciates the introduction of this bill, Mr. Chairman.

[Prepared statement of Mr. Waukau appears in appendix.]

Senator McCAIN. Thank you for your testimony and thank you both for your support, at least conceptually, of this legislation. I believe it's very important and will help, I think, a great deal in seeing eventual passage of this legislation.

Mr. Hayes, what's the current level of BIA funding for forestry programs; do you know?

Mr. HAYES. In fiscal year 1990, sir, the conference action provides about $35 million.

Senator McCAIN. How much do you think would be necessary roughly if this legislation were enacted?

Mr. HAYES. In addition to the $35 million, sir?

Senator McCAIN. Yes; if you'd like, you could submit that for the record.

Mr. HAYES. Yes, sir; I would.

Senator McCAIN. Would it be a significant increase?

Mr. HAYES. There's that possibility, sir.

Senator McCAIN. Why are there so few Indian people employed in forestry management?

Mr. HAYES. I would guess that is probably for a variety of reasons, Senator. If you are talking about employed in forestry management in the BIA or in Indian tribes, there are other agencies which also compete for this same pool of Indian individuals. We of course hope to attract them to the BIA's programs and to the tribal programs. However, the Forest Service and agencies of State government also are in competition for these same people.

Senator McCAIN. Thank you. Mr. Waukau, you have noted the need for funding for roads and trails in Indian forests. What's the present source of funds for roads and trails?

Mr. WAUKAU. The only source are the Bureau funds that come to the trust and/or those fees that the tribe puts back in.

Senator McCAIN. In National forests, it's considerably different.

Mr. WAUKAU. Yes, sir.

Senator McCAIN. Well, I also like your recommendation about a nationwide assessment being conducted and I certainly think we should incorporate that in the bill and I certainly appreciate all of the other recommendations that you made. Obviously, a very thorough study has been made of this legislation. We appreciate your input.

Mr. Hayes, we appreciate your being here this morning. Thanks for your general support. We'll certainly look at your recommendations.

Mr. HAYES. Thank you, Senator.

Senator McCAIN. Thank you for being here.

The next panel is the Honorable Zane Jackson, Chairman of the Warm Springs Tribal Council, Mr. Gary Morishima, Technical Advisor, Natural Resources Management of the Quinault Business Committee, Mr. Don Peasley who's the Chairman, Land and Forestry Committee of the Colville Confederated Tribes and Mr. Irving Billy, the Interim Vice Chairman of the Navajo Tribal Council.

Please come forward and have a seat. As I mentioned, if you care to summarize your statement, your full statement will be made part of the record and we'd like to begin with you, Chairman Jackson. Welcome.

STATEMENT OF HON. ZANE JACKSON, SR., CHAIRMAN, WARM SPRINGS TRIBAL COUNCIL, WARM SPRINGS, OR

Mr. JACKSON. Good morning, Mr. Chairman. Thank you for inviting me to participate in this panel. My name is Zane Jackson. I'm the Tribal Chairman of the Warm Springs Tribes in Oregon. It's a pleasure to be here this morning to testify on The National Indian Forest and Woodlands Enhancement Act, S. 1289. I have submitted prepared testimony and will keep my oral statement brief.

Our reservation has about 300,000 acres of commercial timber. The present annual allowable cut is 92.7 million board feet per year. We're anticipating a reduction to 85 million board feet in the year 1992. Timber is one of our most important resources. We have our own sawmill and plywood plant and with jobs in the woods, forest-related activity is Warm Springs principal source of employment. It is also the principal source of income for tribal government funding.

The BIA is our trustee and they have fiduciary responsibility to run our forests. We rely on them and have always tried to cooperate and assist them in their efforts. By cooperating, we believe, all our purposes will be better served. In addition to cooperating, we contribute substantial amounts of tribal funds to the management of the Warm Springs forest.

Mr. Chairman, with the Bureau's trust obligations, with our supporting the Bureau in its role and with our substantial additional financial contribution, our forests should be among the best in the United States. Unfortunately that is not the case. Our forest does not have all the multi-use management activities that are a regular part of the national forests. For instance, some of the BIA shortcomings at Warm Springs include inadequate soil surveys, an inadequate geographic information system which is standard in all national forests, unrefined silvicultural prescriptions which guide the regeneration and long term productivity of our forests and inadequate provision for alternate forest uses such as recreation.

We have notified the Bureau about our concerns and they are beginning to respond. Together, the Bureau and the tribes are trying to preserve our forests for future generations. However, the Bureau may not be able to respond as much as needed. They are critically short of staff and funding. Our study shows that the Deschutes National Forest adjacent to our reservation has two times the funding and staffing per acre as BIA and Tribal Natural Resources combined on Warm Springs.

If we could, we would contribute more but our resources are limited and our Tribal Government has many other obligations. We cannot nor should not endlessly try to make up for the BIA shortcomings in its trust responsibilities. We feel that given that trust. our forests should be managed at least as well as those of the Forest Service.

So we welcome this opportunity presented by S. 1289 to try and adjust some of these problems. The Bureau of Forestry Program needs to be secured, enhanced and given more emphasis, particularly with respect to honoring its trust obligations. The Warm Springs Tribal Council supports S. 1289 and we suggest some changes which are as follows.

No. 1, the idea of meeting the trust responsibility must be included in the definition of forest and woodland management activities in section 103, Subsection 4. Two, the bill should be clarified as to whether Alaska Native Corporation lands are to be included in those lands requiring BIA management. We believe that as the bill is written, the bill does include Alaska Native Corporation forest lands because such lands could be classified as having restrictions against their alienation. If the committee does intend to include Alaska, then BIA forestry budget must at least be doubled as the trust is extended to Alaskan natives.

No. 3, the forests and woodland management activities listed and the definitions must be included in the Secretary's directive to meet the forestry management objectives in section 201. Right now there is no language to include those management activities in the process of meeting the objectives.

No. 4, in applying the administrative fee deductions, we suggest that it be applied to stumpage rather than forest and woodland products. If it is applied to products such as lumber and plywood, the added financial burden will make our forest enterprises uncompetitive.

No. 5, right now the administrative deduction is returned to our forests. To make certain that no future attempt is made to try to collect an additional deduction to pay into the U.S. Treasury, we suggest the addition of language stating that no other administrative fee deduction shall be charged against or withheld from the gross proceeds of stumpage under authority of 25 U.S.C. 413 or any other law.

No. 6, to ensure that the administrative deduction goes back into the ground as it does now, we ask that the bill make it clear that it cannot go for tribal forest enterprise or education activities.

No. 7, finally, we ask that a report be done for Congress on the possibility of setting measurable standards for the management of Indian forests. If such standards can be developed and implemented, they would give us all a firm and definitive measurement of how well our forests are doing.

Thank you, Mr. Chairman. I will be pleased to answer any questions.

[Prepared statement of Mr. Jackson, Sr. appears in appendix.]

Senator McCAIN. Thank you, Mr. Chairman, and thank you for being here today with us.

Mr. Morishima, welcome back before the committee.

STATEMENT OF GARY MORISHIMA, TECHNICAL ADVISOR, NATURAL RESOURCES MANAGEMENT, QUINAULT BUSINESS COMMITTEE, TAHOLAH, WA

Mr. MORISHIMA. Thank you, Senator. I'm pleased to appear before the committee today to present the views of the Quinault

Nation on the Indian Forest and Woodlands Enhancement Act. My name is Gary Morishima. I am appearing on behalf of Joe de la Cruz, the President of the Quinault Nation who unfortunately is unable to be here to testify today.

The Quinault Nation applauds your leadership and initiative in developing S. 1289 as a vehicle for a discussion of legislative actions necessary to fully develop the potential of Indian reservations, forests and woodland resources. We support the concepts contained in S. 1289. We feel however that the capacity of the bill to effectively—

Senator MCCAIN. Excuse me. There's a vote. Senator Gorton, I believe there's a vote in progress.

[Recess.]

[Whereupon, at 9:35 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF PATRICK HAYES, ACTING DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS, (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1289, A BILL CITED AS THE "NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT."

October 19, 1989

Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1289, the "National Indian Forest and Woodland Act."

We recommend enactment of S. 1289 with the amendments described in this statement.

Indian forest resources and the economic benefits derived from their use and development, both on and off Indian reservations are of major concern to Indian tribes. This bill, if fully incorporating the administration's recommendations, would go a long way in promoting Indian self-determination and economic self-sufficiency.

The Wheeler-Howard Act, also known as the Indian Reorganization Act of 1934 (25 U.S.C. 461 et seq.), instituted the requirement that Indian forests under the Act be managed under the principles of sustained yield. Since enactment of that major legislation, additional changes and modifications to sustained yield management have occurred only a few times, principally in 1944 (58 Stat. 132-135; 16 U.S.C. 583), and 1964 (78 Stat. 186, 187; 25 U.S.C. 406, 407).

Although the principles of sustained yield forest management have remained unchanged, products from forests have evolved as well as advanced in marketing and forest technology. Harvest methods have improved, there is better utilization of harvested materials, and there have been many advances in forest development. For example, some Indian tribes conduct computerized

greenhouse operations and operate fores. nurseries, seed orchards and other tree improvement programs. Indian tribes own and operate state-of-the-art forest products manufacturing enterprises, and compete in world markets with various forest products. The Bureau of Indian Affairs (BIA), over the years, has taken on the additional workload and expense of an increasingly more sophisticated forestry program.

Because opportunities to improve the forestry program occur infrequently, we view this as a rare privilege to provide extensive comments on the proposed bill and to offer recommendations that we believe incorporate all of the BIA's and the tribes' Indian Forestry program goals and objectives.

Legislation that would improve the management of forest resources on Indian lands should contain the following elements:

1. BIA responsibility and authority to manage all Indian forest lands (timberland and woodland);

2. timber sale administrative deductions and procedures set by statute, not secretarial discretion;

3. authorization for direct payment of timber sale proceeds to Indian recipients;

4. authorization of an Indian Forestry Educational and Training Assistance Program;

5. application and inclusion of integrated resources management principles in forest resource planning and field activities; and

6. evaluation of the trespass problem on Indian lands and appropriate remedies.

These elements are taken from the Intertribal Timber Council (ITC) Vision 2000 Report, which lists the forestry program objectives and goals that ITC member tribes are working to attain by the year 2000. The workshop that developed the report was a joint ITC and Bureau Forestry effort and are the common goals for both participants. A copy of the report is submitted for the record.

All of the provisions of S. 1289 are commendable. However, we believe some stop short of fully resolving the forestry issues being addressed. The following is our section-by-section analysis of the bill along with our suggested amendments.

Section 1 of S. 1289 cites the title of the Act. The title is technically incorrect because the BIA is responsible for managing all forest resources, not just timberlands and woodlands. We recommend that the title be "The National Indian Forest Resources Management Act."

TITLE I - ADMINISTRATIVE PROVISIONS

Section 101 sets forth the findings of the Congress. We have no objections to these.

Section 102 sets forth the purposes of the Act, which include: (1) safeguarding investments/providing adequate, stable, and secure funding, (2) providing sustained yield management, trust responsibility, (3) increasing Indian forester employment, (4) promoting Indian self-determination, (5) providing Secretarial authority to curb timber (and fire) trespass on Indian lands.

The purposes are good, but some are not expressed very strongly. A very important purpose should be added: "Support full and active Indian participation in the development of their forest resources, enhancement of forest industry related employment opportunities, expansion of forest products marketing activities, and other activities promoting Indian self-determination and economic independence."

Section 103 provides the definitions for terms to be used for the purposes of this Act.

The definitions are taken from 25 CFR 163.1 and the "Native American Woodland Resources National Overview Report". Some are archaic and no longer used as defined in this bill. Some are redundant; others are worded in a manner that gives rise to misinterpretation. For example, the term "Indian forest and woodland" used throughout the bill should be changed to "Indian forest land". Indian forest land is a term encompassing all classes of Indian forests which divide out into two major classes - timberlands and woodlands. In light of the numerous concerns we have about the present terms and definitions in this bill, we recommend that the Committee Staff work with BIA Forestry personnel to arrive at agreed upon modern forestry terms and definitions.

Because Federal trust responsibility issues regarding Alaska Natives and natural resources are unresolved, we assume that S. 1289 does not propose to include additional lands as eligible to receive Forestry funds and services.

TITLE II - FOREST AND WOODLAND ENHANCEMENT

Section 201 directs the Secretary of the Interior (Secretary) to manage commercial forest lands and woodlands, and to be guided by eight objectives, which are taken directly from 25 CFR 163.3.

Section 201 states that only commercial forest lands and woodlands will be managed. This bill language is too restrictive because the Secretary has a trust responsibility to manage and protect (in varying degrees) all Indian forest lands and not just commercial lands. The intensity of the management effort is proportional to the value of the forest resources and to tribal objectives.

The objectives for management of forest resources are acceptable. However, we question the added value of codifying, in federal statute, current Federal Regulation 25 CFR 163.3, which is based on existing law.

Section 201(8) implies, as does 25 CFR 163.3(n), that management and protection of Indian forest lands includes other forest resource values plus recreation, aesthetic, cultural, and other traditional values. This is termed integrated resources management and is an ITC Vision 2000 Report high priority goal. We suggest this be amended to clearly state that Integrated Resources Management Planning (IRMP) is a Forestry Program management objective.

Section 202 directs the Secretary to limit fee deduction to the lesser amount of 10 percent of gross proceeds, the actual percentage deduction now collected or the total cost of the Forestry program where collected. It exempts the costs paid from funds appropriated for fire suppression or pest control. This goes a long way towards resolving a longstanding issue with Indian tribes. To prevent misinterpretation, we recommend that 25 U.S.C. 413 be formally amended by the bill. The Indian tribes feel the Secretary should not have wide ranging discretion concerning the setting of administrative fee

amounts. The accepted term of use for these deduction/fees is "Forest Management Deductions".

The bill states that the full amount of administrative deductions collected by the Secretary for a reservation shall be made available to the tribal governing body for use in the reservation forestry program. This may be a source of contention. Allottees may not prefer to see the fees collected on their allotment, which to them is a considerable reduction in stumpage value received, used in a reservation tribal forestry program, and possibly spent for work on reservation forest lands, other than their own. However, tribal elections are held to honor the will of the members, and it is at this point that dissent can be expressed.

Perhaps a more important aspect of section 202 is that it is silent about fees generated where no formal tribal forestry program exists. In such cases, the Secretary would be directed to use the fees collected for forestry purposes on lands where they were first generated, with any surpluses used elsewhere in the Indian forestry program. Amending 25 U.S.C. 413, to prevent any of these fees generated/collected from being covered into the U.S. Treasury, will clarify this point.

Finally, this bill should not raise a new issue regarding which forest resource values generate forest management deductions. Bill language should plainly state that the basic raw forest material is the sole source for generating forest management deductions.

Section 203 directs the Secretary, within 180 days of enactment, to evaluate the extent of the problem on Indian forest lands; promulgate regulations for trespass, including penalties, collection of costs, assessments, and the like; and provide a report to Congress outlining the nature and extent of the

trespass problem on Indian lands, including legal or practical impediments to the resolution of this problem.

The time frame to prepare a report and promulgate Federal regulations addressing the Indian trespass problem is not realistic. We recommend a minimum of one year to accomplish these tasks. Also, this bill presents an opportunity to address the Department of Interior's general trespass problem. Indian lands often adjoin other lands administered by the Department, principally run by the Bureau of Land Management. Because the trespass problem is universal to all land managers, we recommend that S. 1289 be amended to provide that the report be coordinated with other agencies within the Department of the Interior.

TITLE III - INDIAN FORESTRY EDUCATION ASSISTANCE PROGRAMS

Section 301 establishes a Forestry intern program, a cooperative education program, and a scholarship program. It directs the Secretary to continue the programs until there are an adequate number of qualified, professional Indian foresters to manage the Bureau and tribal forestry programs.

We strongly support such intern programs and feel they will be a positive force in promoting Indian self-determination. The cooperative education program should also include an obligated service requirement to make it comparable to the Forester intern and scholarship programs.

TITLE IV - AUTHORIZATION OF APPROPRIATIONS

Section 401 provides authorization for money to be appropriated in each fiscal year as are necessary to carry out this Act.

The BIA currently administers similar education programs to train and educate qualified Indian students in natural resources through cooperative programs and workshops with Haskell Indian Junior College and with direct financial assistance. We plan to increase our efforts in this area by better utilizing the educational resources already available within the BIA. The educational provisions in S. 1289 will hopefully complement our efforts to attract qualified Indian students to manage the Forestry programs maintained by the BIA or by the tribes.

I again want to thank the Committee, and particularly Senator McCain, for introducing this bill. BIA staff and resources are ready and eager to provide assistance, advice, and further information that will contribute to the passage of comprehensive Indian forestry legislation to improve management of forest resources on Indian lands.

This concludes my prepared statement. I will be pleased to respond to any questions the Committee may have.

Intertribal Timber Council

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TESTIMONY OF D. FRED MATT,
PRESIDENT, INTERTRIBAL TIMBER COUNCIL,
ON S. 1289,
THE NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT,
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS,
OCTOBER 19, 1989

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Bois Forte Band of Chippewa
Choctaw Nation of Oklahoma
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Tulalip
Tule River
Turtle Mountain
Umatilla
Warm Springs
White Earth Tribe
White Mountain Apache
Yakima

Mr. Chairman, members of the Select Committee on Indian Affairs, good afternoon. I am Fred Matt, President of the Intertribal Timber Council, and it is my pleasure to appear before you today to discuss S. 1289, the National Indian Forest and Woodland Enhancement Act.

I.T.C. and the forest resource

The Intertribal Timber Council is a thirteen year old affiliation of sixty two Indian Tribes and Alaska Native corporations that collectively own better than 95% of the timber and woodland resources held in trust by the Bureau of Indian Affairs. That 14.2 million acre total forest resource includes approximately 5.9 million acres of commercial forest land with a biological annual allowable cut of close to one billion board feet. In Alaska, trust allotments and native corporation lands generate perhaps an equal figure. Off of forested trust lands, timber receipts are a principal source of income for numerous Tribal government, and are relied upon for the general operation of our governments and the provision of services to our Tribal members.

Additional benefits

In addition to timber income, trust commercial timberlands support at least six Tribal sawmills or other substantial forest product manufacturing facilities. Annual employment generated from the Tribal forest products industry is estimated at 12,000 person-years. One third to one half of that directly serves individual Indians.

Woodlands

Also included are 6.8 million acres of woodlands, which are a part of our overall forest lands. Pursuant to an August 10, 1987 memo, the B.I.A. Division of Forestry has a specific responsibility to manage these lands. 4.5 million acres of these woodlands are deemed commercial, and generate an estimated $39 million annually in benefits for their

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Tribal owners.

Integrated resource management

It is important to note that our forest resource has substantial values beyond the strictly commercial harvest of our timber land and woodland. Tribes are increasingly realizing other forest land uses such as fish and wildlife habitat, recreation, grazing, and cultural and environmental preservation. Integrated resources management is now an important aspect of our forest planning.

I.T.C. support for S. 1289

So, our forest resource is vital to our well-being, economically and societally. We are deeply involved in and care about its management and preservation. Therefore, the Intertribal Timber Council is pleased with the introduction and wide-ranging consideration of Indian forestry legislation. S. 1289, the National Indian Forest and Woodland Enhancement Act, is a good discussion vehicle, and with a number of suggested changes, we support this necessary legislation.

THE NEED FOR THE LEGISLATION

The need for a B.I.A. Forestry program

There can be no question that the Bureau of Indian Affairs must have a forestry program. After the protection our land itself, it is clear that the Federal trust responsibility extends to the valuable trees that grow on that land and the environment they create. The renewable aspect of our forests redoubles that Federal trust obligation. Not only must the U.S. government assure the proper sale of the timber asset, as it must for such other natural resources as oil, gas and minerals, but it must also provide the expert management required for its perpetual regeneration and sustained economic productivity.

The Trust Responsibility

The Federal trust responsibility to manage our forests for our permanent benefit has been clearly stated by the U.S. Supreme Court. Such management is also implicit in the few Federal statutes governing the harvest of our timber, and has been practically recognized by the Administration's creation and regular funding of the B.I.A.'s Division of Forestry and its attendant regulations.

Inadequate forestry laws

However, despite such acknowledgements of the Federal fiduciary obligation to manage and preserve our forests, there are no statutes guiding a comprehensive Federal Indian forest management program. The only Federal laws addressing Indian timber management are 25 U.S.C. 406 and 407 as amended, authorizing the harvest off of individual Indian and Tribal trust lands, and the Indian Reorganization Act, 25 U.S.C. 466 as amended, which requires management under the principal of

sustained yield. While these laws direct the creation of a Federal Indian forestry management program based on sustained yield and implicitly affirm the Federal trust responsibility for timber, they total less than two pages in length and, by their very general nature, allow the Secretary of the Interior great discretion in the actual components and operation of a forestry program. For authority to provide Federal appropriations to run the forestry program, the Bureau of Indian Affairs, and the Tribes, must rely on the 1921 Snyder Act, which is very broad authority for the expenditure of appropriations by the B.I.A.

Snyder Act difficulties

The problem with relying on the Snyder Act, which does not have any specific references to timber, is that it leaves the forestry program open to substantial alteration at the whim of the Administration. Other than the requirement that forestry be conducted according to sustained yield, the Administration is free to create or eliminate whatever activities and standards it may choose for forestry. Such uncertainty inhibits the development of strong, comprehensive and long term program guidelines and practices that are essential for quality forest management.

In two fairly recent examples of the Forestry program's potential volatility, previous Administration officials within Interior have suggested that the trust responsibility extends only to protection of the forest from infestation and fire, and that the entire Forestry trust program might be turned over to some private business. Fortunately, neither of those concepts came about.

A Strong, Clear Forestry Program is needed

So, a strong statutory base with clear long-term standards for the Bureau of Indian Affairs forestry program would provide the certainty necessary for the Bureau to meet its trust responsibilities for the management and preservation of our forests.

The need to confirm administrative deductions

Certainty is also needed in the administrative fee deduction program by which Tribes mandatorily provide a part of the overall contribution we directly make to the well being of our forests. The practice of directing administrative deductions back into the management of Tribal forests was instituted fourteen years ago to partially correct historic inadequacies in Federal forestry appropriations. The application of these funds back to our lands has proven to be a vital part of our overall forestry program. For instance, most of the cyclical reforestation that is done following a timber harvest is paid for with the administrative deduction. However, twice in the last seven years (1982 and FY 1988), efforts have been made by personnel within the Department of the Interior to divert these Tribal timber receipts into

Federal coffers.

Fortunately, Tribal efforts rebutted both of Interior's attempts. But, had they been allowed to succeed, we would have been faced with the difficult choice of either cutting services to our people or letting our forests deteriorate while the B.I.A. diminished its trust responsibilities. Therefore, the provision in S. 1289 to statutorily confirm the current administrative deduction practice, which has been successfully assisting our forests for fourteen years, will be a great relief.

Trespass

Presently, Tribes must rely on state law for the levying of civil damages for forest trespass, which is the unauthorized, and unpaid for, taking of Indian trust timber. Enforcement is difficult, jurisdiction is complicated, and state laws are often weak or even non-existent. By instituting fairly stout Federal penalties and calling for a report, your bill is a good start at addressing this vexing problem.

Education

As noted in the introductory remarks on S. 1289, there is a serious inadequacy of trained Indian professionals in the field of forestry. Yet of almost all the technical professions, it is forestry that offers the Indian people one of the best opportunities to practice a technical profession right at home for the immediate benefit of their reservation. And forestry is fairly labor-intense; there are lots of good jobs for qualified individuals. So a multi-faceted education program that is targeted at the forestry profession is not only very necessary, it is very desireable.

PROPOSED AMENDMENTS

Mr. Chairman, the Intertribal Timber Council supports S. 1289 with suggested amendments and is encouraged by the Select Committee's interest in considering Indian forestry legislation. We are particularly pleased with your desire to also use the introduction of S. 1289 as a means of stimulating broad discussion on Indian forestry and of gathering a wide array of information and comment on the subject. To that end, the I.T.C. would like to propose a number of amendments to S. 1289.

I would like to proceed section by section through the bill mentioning the principal changes we believe would be helpful. A more detailed compilation of our proposed amendments is being submitted along with this testimony.

Section 101. Findings.

In Subsection (a)(4), the word "manage" should be added to the list of activities found to be a U.S. trust responsibility. Forest management is one of the principal trust functions of the United States in administering our forests, and so should be

included.

The Findings should contain a subsection noting the increasing administrative burdens placed upon the management of Indian forest lands by Federal property management laws, such as the Archeological Resources Protection Act and the National Historic Preservation Act, without the added funding required to carry out such laws. This new subsection perhaps could be added following Subsection (8), which finds that Federal funding for Tribal forests has lagged behind that for other agencies.

The Findings should also note that, as part of its trust responsibility to protect the forest resource, monitor forest land activities, and to enhance economic, recreational, cultural and other uses of the forest resource, the B.I.A. should provide a suitable system of all-season trunk roads and trails.

Section 102. Purposes.

In Subsection (1), the purposes should include "management" among the activities the bill seeks to adequately and stably fund. Again, management is a critical activity and should be covered.

Also, securing the return of administrative deductions to the Indian forests should be listed as a purpose of the Act.

Additionally, the bill should state that its purpose is to supplement the authority of the Snyder Act, and not replace it. The authority of the Snyder Act is vital to the Bureau of Indian Affair's ability to meet all the varied and changing needs to the Indian people, and it should be made clear that other statues dealing with more specific aspects of the Federal government's service to Indians do not erode or in any fashion curtail that broad authority.

Section 103. Definitions.

We ask that the definitions section, as it deals with forest land classifications, be simplified and corrected. Forestry is a technical field with an established nomenclature, including the designation of land classifications. Accordingly, the term "forest land" is the most senior land classifications for the forest, and is the term which ought to be used almost universally in this bill. The term "forest land" includes both reserved and unreserved timberlands and woodlands, of both commercial and non-commercial use. These more specific subclassifications should be used in the bill only where the legislation is seeking to address just such a particular forest land type or associated activity.

More important than just the proper technical designations, however, is the need to recognize the fact that the Bureau of Indian Affairs has a trust responsibility for the management of our entire forest, whether it is commercial or non-commercial,

timberland or woodland. While it may be true that the B.I.A.'s current Forestry program is focused on the management of commercial timberland, the Bureau still has an obligation to manage other parts of our forest, whether they be used for recreation, cultural, environmental, or other purposes. The bill and its definitions should be modified to reflect these other uses and the B.I.A.'s obligation to manage for them.

Concomitant adjustments in defined expressions would have to be made accordingly throughout the bill.

Subsection (4)(H), including consultation with Tribal enterprises in the definition of "forest and woodland management activities", should be expanded to include "assistance", and "Tribes" should be included along with their enterprises. In keeping with the widely accepted concept that Tribal communities should garner the benefits of processing and marketing their forest products, the provision of assistance to Tribes and their enterprises for starting, maintaining, or expanding, a forest related enterprise must be recognized as an essential Bureau activity in this bill.

Subsection (4), defining "forest and woodland management activities", should be expanded by adding "integrated resources management planning" as "J" to the listing of included activities. Integrated resources management planning (IRMP) is very important to the coordinated use of the entire forest resource. Tribes have recognized that their forests are considerably more than a resource just to be cut and replanted, and appropriate planning for all of a forest's multiple uses is today a necessary forest practice. It should be noted that, to the extent management disciplines other than Forestry are involved in IRMP within forest lands, those disciplines should be obliged to bear the financial and administrative burdens of participating in the coordinated planning effort.

We also recommend that the development and maintenance of an adequate forest road and trail system within Indian forest lands be added as a new subparagraph "K" to the Subsection (4) definition of forest and woodland management activities. As stated in our comments on S. 1289's Findings, a good system of roads and trails is essential for the proper trust management of a forest, and presently the B.I.A. does not recognize the provision of access roads and trails as an authorized management function. As part of the Bureau's trust obligation for forest protection and economic access, B.I.A. should be authorized to develop and maintain a forest infrastructure system.

Section 201. Management of Commercial Forests and Woodlands.

This is the heart of the bill. It directs the Secretary to manage Indian forests according to the objectives set forth in subsequent subsections. While it does not explicitly authorize a

program or programs to attain these objectives, such a program seems implicit in the directive. But, by not setting out specific programs, maximum forest management flexibility is granted both the Bureau and the Tribes, should they undertake the management of their forest through a Self Determination Act contract.

In setting out the objectives of forest management, we note that the forest management activities, as listed in the definition of "forest and woodland management activities" in Subsection 103(4), are not incorporated into meeting those objectives. This is because the expression "forest and woodland management activities" does not appear anywhere in Section 201. This is probably a technical oversight which can be easily corrected by incorporating that expression in the lead language of Section 201.

Again, throughout this Section, the expression "commercial forests and woodlands" should be dropped for the more inclusive and technically correct "forest lands" where appropriate.

The regeneration of forest lands in Subsection (1) should be expanded beyond "old growth", which could be interpreted as virgin forest. Perhaps "forest growth" is more appropriate. The provision for new forest growth should also include suitable out of production lands.

Because the use of the forest extends beyond its being just a source of harvestable products, the forests regulation in Subsection 2 should be primarily regulated by Tribal objectives and long-range multiple use plans, which in turn may be supported by forest products marketing programs, not the reverse.

In keeping with the concept of addressing the whole forest and all its multiple uses, the role of integrated resources management planning should be stated in this section, perhaps as a new subsection (9).

Section 202. Administrative Fee Deduction.

The expression "unmanufactured" should be inserted in front of "Indian forest and woodland products". Otherwise, because the definition of "forest and woodland products" includes manufactured items and items severed from the land, such as logs, an administrative deduction of up to 10% would be taken from the gross proceeds of any Indian or Tribal sawmill or other wood products manufacturing or marketing enterprise. Such an assessment would render almost all such enterprises unprofitable.

The I.T.C. recommends that a new subsection be added to Title II permitting, at a Tribe's option, the direct payment to Tribes of timber receipts. Reportedly, this method is already occurring with agriculture lease receipts and mineral royalties. The present requirements that Tribal timber receipts be Federally

collected,invested and then distributed back to the Tribes is time-consuming and can seriously interfere with the cash flow of Tribes and their enterprises. Provision would still have to be made for payment of the administrative deduction.

We also recommend that a forest development fund be established as a separate subsection within Title II. With emphasis on reforestation and thinning, the fund could be structured to first eliminate the backlog of suitable forest lands in need of treatment, after which funds could be dedicated to the cyclical treatment of in-production forest lands.

Section 203. Forest and Woodland Trespass.

Our only comment on this Section is that the time requirements for promulgating new trespass regulations and submitting a report on the extent of trespass activity to Congress are unrealistically short. Given the need for Tribal involvement and comment, providing one year for each undertaking would be more appropriate.

Section 301. Establishment of Indian Forestry Education Assistance Programs.

Under the Forester Intern Program, we suggest that the bill authorize twenty positions. That would be an expansion of the ten positions in the current administratively established intern program.

To the extent that the intern program and the scholarship programs authorized by this Section involve payment for and in direct support of academic pursuits, funding should drawn from the Bureau's education program.

We also ask that a new subsection (d) be created establishing a program whereby the B.I.A. and Tribal forestry programs would have the option of attracting Indian forestry graduates who are now working elsewhere by offering to repay their outstanding student loans. In exchange for the loan repayment, the forester would have to enter a contract to work in B.I.A., Tribally contracted or Tribal forestry programs for a set period of time. The amount of time would depend on the outstanding amount of the loan. Quite frankly, the Bureau of Indian Affairs and the Tribes have a difficult time competing with the U.S. Forest Service and the B.L.M. in hiring trained Indian foresters, and this would give Indian related forestry organizations one additional tool.

Section 401. Authorization of Appropriations.

We recommend that this Section be amended to authorize appropriations in the specific amount of $60,000,000 for each of fiscal years 1991 through 1995, and such sums equal to or greater than that amount as necessary for future fiscal years, to carry out the Act. This figure is based on the present level of funding

for the Bureau's Forestry program of $33 million and the $26 million in needed additional funding determined in B.I.A. Forestry's FY 1987 Funding and Staffing Needs Analysis, with a small addition for inflation. These are the actual financial requirements of what today's Forestry program ought to be, to the best of our ability to determine them, and so ought to be stated.

A separate subsection in Title IV should be established to authorize appropriations for the roads and trails system in the amount of at least $4.3 million.

Another separate subsection should be added to Title IV to authorize appropriations for the Forest Development program in the annual amount of $10 million.

Additional Recommendations.

Finally, we recommend that a section be added to the bill authorizing a comprehensive and independent assessment of how well the Bureau is taking care of our forests. We ask that the assessment be fully independent because the Bureau should not be relied upon to impartially judge the success of its own program. It just is not healthy to ask the trustee to evaluate how well they are conducting the trust. Also, an in-depth examination of the Indian forestry program is presently necessary. The last such study was conducted in 1976 by the General Accounting Office, and it found serious shortcomings. Although the G.A.O. is presently conducting an updating review of its 1976 study, it is expected to be a cursory study at best. More significantly, the Tribes themselves are beginning to voice serious concern about the adequacy of the Bureau's forestry programs on their reservations. So, a thorough and independent review would be very helpful. Initially, the conduct of an independent assessment that is both geographically diverse and programmatically comprehensive has been estimated as taking two years and costing approximately $250,000 a year. We also suggest that the bill provide for independent re-evaluations every ten years, so that the Tribes not only learn how they are doing now, but will be able to see if things are improving or deteriorating over time.

That concludes my statement. Thank you for the opportunity to present the Intertribal Timber Council's comments and suggestions on S. 1289. The I.T.C. would be pleased to provide whatever assistance we can with this Committee's consideration of Indian forestry legislation and with its further movement toward enactment.

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

P.O. Box C, Warm Springs, Oregon 97761/503 553-1161

TESTIMONY OF
ZANE JACKSON, TRIBAL COUNCIL CHAIRMAN
OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
OF OREGON
REGARDING S. 1289
"THE NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT"
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE,
OCTOBER 19, 1989

Good afternoon, Mr. Chairman. I am Zane Jackson, Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. I am pleased to be here today to testify in support of S. 1289, the "National Indian Forest and Woodland Enhancement Act".

The Warm Springs Reservation is 640,000 acres in size and located in north central Oregon on the eastern slope of the Cascade Mountains. Three hundred seventy thousand acres of our reservation are covered with forest, mostly douglas fir and ponderosa pine. The present annual available cut is 92.7 million board feet per year, with a proposed reduction to 85 million board feet in 1992.

With about half of our reservation land dedicated to timber production, forestry is obviously the single most important industry to our 3,200 Tribal members and to our Tribal government. Receipts from the sale of our timber are the single largest source of revenue to our Tribal government. Almost all the logs off our land go to our Tribal sawmill and plywood plant. These free-standing enterprises and related forestry jobs in the woods are the largest source of employment for our Tribal members, and also provide a significant number of jobs to the nearby non-Indian community.

With our Tribal government and membership so dependant on the wood products industry, it has always been our uppermost desire that the forest resource that sustains that industry be kept healthy and productive. To that end, we have always placed great reliance on our trustee, the Bureau of Indian Affairs. At Warm Springs, we view the Bureau of Indian Affairs as our supporter and partner. The Bureau has wide ranging responsibilities and powers to help foster and perpetuate our people, our government, and our assets. Their goals are generally the same as ours, and since we are locked together, we believe we can better achieve those goals if we work together in

cooperation, trust and friendship. We believe this approach has been beneficial to us, and we remain dedicated to it.

As our trustee, the Bureau of Indian Affairs has prime responsibility for the management or our assets, including our most valuable asset, the forest. Forests take a very long time to grow and a very short time to harvest. The consequences of one's actions in the forest will not become evident for many years, and then, they are very difficult to modify. Those decisions of years before can be irreversibly built into our forest as it grows. So, understandably, forest management requires great technical knowledge and prudent decision making. It has always been, and remains, the Bureau's responsibility and task to bring these qualities to the management of our forest asset.

At Warm Springs, we have encouraged the Bureau in its forestry efforts. We place great emphasis on the fact that the Bureau is our trustee; it has the obligation, and we believe the desire, to operate a forestry program to the highest fiduciary standard for our benefit. We have placed our faith in, and almost totally rely upon, the B.I.A.'s forestry management. Furthermore, we also place substantial amounts of our Tribal funds in their forestry program, to assist and supplement their efforts. We realize that the Bureau, despite its best desires, cannot do everything that has to be done in the forest, so we contribute substantial amounts to help. Our conservative estimate is that the Warm Springs Tribes cover at least half of the cost of operating the forestry program on our reservation. We recognize that our Tribal government also has an obligation to help run and maintain our forest.

With the Bureau's obligation to manage our forest in the capacity of trustee, with our supporting the Bureau in its role, and with our substantial additional financial contribution, our forest ought to be among the best in the United States. Unfortunately, it is way below standard.

Although the B.I.A., in its unique capacity as trustee, has higher management performance obligations, the condition of our forest is not as good as those of the U.S. Forest Service or the Bureau of Land Management. Nor is it as good as state forests or many private forests, where profit is often the primary goal.

First, the Bureau's information base on our forest is not adequate. The soils survey is incomplete, and there is an inadequate geographic information system. This computerized resource information retrieval and mapping system is standard on Federal forests and on many large private land holdings. With a weak information base, some of the basic assumptions underlying the forest management plan may be in error.

There are also concerns about the silvicultural prescriptions that guide the regeneration and long term productivity of our forest. The B.I.A.'s silvicultural prescriptions are not refined, causing smaller stands of healthy young trees to be destroyed when they fall within the boundaries of acres selected for rehabilitation or clear cut harvest. B.I.A. has widely planted species of trees that may not be appropriate for where they are sited, and has emphasized the planting of species that will probably not have very good future value. Analysis of the potential for fertilization, pruning and other intensive management practices has been inadequate.

The B.I.A. has also not been getting adequate value for the harvest that has been taking place. Appraisals of alternative uses of timber, such as export, have not been done. Utilization of residue and salvage has not been adequate. Tons of material with significant chip value have been burned or left to rot in the woods.

If these practices are not corrected, serious long term damage to our forest will result, with harsh economic consequences for our Tribes. We have notified the Bureau about our concerns, and they are beginning to respond. However, it is not certain that they will be able to respond adequately. They are critically short of staff and underfunded. Our study shows that the Deschutes National Forest adjacent to our reservation has two times the funding and number of employees per acre as B.I.A. Forestry and Tribal Natural Resources combined on Warm Springs. Additionally, with the B.I.A. Forestry program overwhelmed and without adequate resources, the inability to attract and retain good personnel further compounds the difficulties.

To help stem these problems, it is possible that we could contribute more. However, our resources are not limitless and our Tribal government has many other obligations. While we are willing to help as best we can in making up some of B.I.A.'s inadequacies, we have no intention of constantly filling in every time B.I.A. cannot fulfill one of its trust obligations. Given the trust responsibility, the management of our forest should be at least as well funded and staffed as the management of adjoining National Forests.

So, the Warm Springs welcome the opportunity presented by the introduction of S. 1289. From our perspective at Warm Springs, the B.I.A. Forestry program needs to be secured, enhanced, and given more emphasis, particularly with respect to the Federal government honoring its trust obligations for the management of Tribal forests. That is an obligation where the Bureau is presently falling further and further behind.

Indian Forestry legislation is both needed and timely, and we support S. 1289 with the following suggested amendments.

1.) The Bureau's trust responsibility for protecting and managing our forest resource must be incorporated into the definition of "forest and woodland management activities" in Section 103(4). The Federal trust responsibility is cited in the Findings and Purposes of the bill, but is otherwise not included in the operational aspects of the bill. To correct this, we suggest that on page 6, on line 7, all after the comma be stricken, and that all of line 8 be stricken, and that the following be inserted in lieu thereof: "done in the management of forest land pursuant to the United States' trust responsibility to manage such land according to the highest fiduciary standards, including - ".

2.) We believe this legislation will extend the Bureau's timber management obligations to Alaska Native corporation lands. Section 201 requires that the Secretary of the Interior manage "commercial forest lands", which is defined in Section 103 as "Indian land that is forest land capable of bearing merchantable forest products." The bill defines "Indian land" to include land that is "owned by an Indian or Indian tribe and is subject to restrictions against alienation." An "Indian tribe" is defined to include "an Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act." Lands owned by Alaska Native corporations under the Alaska native Claims Settlement Act (ANCSA) are lands "subject to restrictions against alienation" by virtue of the amendments to the ANCSA (P.L. 100-248, Feb. 3, 1988) which extend indefinitely the original twenty year restriction on alienation of ANCSA stock. Thus, through a sequence of definitions and by reference to ANCSA, S. 1289 clearly extends B.I.A. forestry management responsibility to the forest lands of Alaska Native corporations.

If the drafters of S. 1289 intend that Alaska Native corporation lands be included in the bill, we will have to request that the B.I.A. forestry budget be at least doubled. There are millions of acres of timberland and woodland owned by Alaska Native corporations, and if the bill's forest management activities are to be carried out and it's management objectives met for those lands without diminishing the forestry program on trust lands, the program is going to have to be vastly expanded.

3.) We suggest that the "forest and woodland management activities" listed in the bill's definitions be incorporated into the Secretary's directive to meet the management objectives set forth in Section 201. Presently, Section 201 does not contain the expression "forest and woodland management activities", so there is no direct authority that the Secretary use the management activities listed in Section 103 (4) in meeting the Section 201 objectives. Although this is probably just an oversight, we suggest a correcting amendment by striking the words "manage

commercial" on line 17 of page 12 and insert in lieu there of the words "undertake forest and woodland management activities on."

4.) Regarding the administrative fee deduction in Section 202, we ask that the expression "sales of Indian forest and woodland products" on page 14, lines 21 - 22, and page 15, lines 1 - 2, be replaces with the expression "of Indian forest and woodland stumpage". "Stumpage" is the money paid for standing timber or other forest material in its unsevered natural state, and the collection of the administrative deduction from those payments is the current practice we would like to see continued. To leave the expression "sales of Indian forest and woodland products" in the bill will allow the application of the administrative deduction to such items as lumber, plywood, logs and other wood products that have been removed from the ground and have an added value. If such a deduction were to be charged, it would add a significant financial burden to those Tribal and Indian wood products enterprises, placing them at a sharp financial disadvantage and probably driving them out of business.

5.) We also recommend that Section 202 be amended to make it very clear that no future administrative fee deductions under the authority of 25 U.S.C. 413 are to be charged against forestry receipts, either to be covered into the Treasury as miscellaneous receipts or to otherwise off-set Federal appropriations. We mention this because we are not certain that the expression "notwithstanding the provisions of 25 U.S.C. 413" absolutely precludes a future attempt to levy another administrative deduction under the authority of 25 U.S.C. 413 to be covered into the Treasury while leaving this Section 202 administrative fee deduction unaltered with its proceeds returning to our forests. Possible clarifying language to be added to the end of Section 202 could read "No other administrative fee deductions shall be charged against or withheld from the gross proceeds of unmanufactured Indian forest and woodland products under authority of 25 U.S.C. 413 or any other law."

6.) We have a further concern about the broad possible use of the administrative fee deduction for any activities defined in Section 104 (4)'s "forest and woodland management activities". The purpose of the administrative deduction has always been to go back "onto the ground" for the immediate benefit of the forest. If they are allowed to go into Tribal business activities or education assistance, their purpose of maintaining the forest resource would be diminished. Therefore, we suggest that "forest and woodland management activities" subparagraphs (H) business development - and (I) - education assistance - be excluded from the allowed uses of the administrative fee deduction on line 5 of page 15.

7.) We understand that the Select Committee is considering, and the Intertribal Timber Council is recommending, that the bill be amended to authorize an independent analysis of Tribal forests. Our final recommendation is that that analysis be expanded to

include a report to the Congress discussing the possibilities of establishing a set of measurable standards by which the management of our forests could be quantitatively evaluated. I realize this may be a controversial item, and I am not certain such a set of standards can be developed, even on a regional basis. However, I ask that it be examined because we need some firmer means of determining how the Bureau of Indian Affairs is doing in managing our forests. Unfortunately, the objectives set forth in Section 201 of the bill do not really assure any improvement in the management of our forests. Although those objectives are the driving provisions in this legislation, they were drawn from the current B.I.A. Forestry regulations, and their presence there has not really served as much of a bulwark against the erosion or sub-par management of our forests, so there is no particular assurance that they will generate any better management by virtue of being incorporated into a Federal statute.

By these observations, please understand that I am not downplaying this legislation. S. 1289 is a vitally needed starting point and discussion vehicle for improving the unsatisfactory management of our forests. The idea of achieving and implementing some measurable standards will probably be elusive, and it may be futile to try to quantify the Federal trust obligation. However, I believe it is an interesting idea worthy of exploration, and so I suggest it be examined and reported to Congress.

That concludes my remarks. I hope they have proved beneficial. I would be pleased to try to respond to any questions you might have, and to render any assistance you might seek in the consideration of this bill.

Thank you.

Quinault Indian Nation

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Testimony Of Quinault Nation Before The Senate Select Committee On Indian Affairs On S. 1289, "National Indian Forest And Woodland Enhancement Act" Washington D.C., October 19, 1989

The Quinault Nation is pleased to appear before the Committee today to present its views on S. 1289, the National Indian Forest and Woodland Enhancement Act. We applaud the leadership and initiative of the Committee in developing this legislation for consideration by the Congress. We stand ready to work hand-in-hand with the Committee, Congress and the Administration to develop a comprehensive legislative approach to correct existing deficiencies, to explicitly and comprehensively acknowledge the federal government's trust responsibility to Indian forests, and to create opportunities for Indian people to realize the full potential benefits attainable from proper management of their forest resources.

It is our understanding that S.1289 was introduced for the purpose of soliciting discussion on the need for and substance of legislative action to address Indian forestry problems. We believe that legislative action is necessary and generally support the concepts contained in S.1289. However, we believe that a broader scope would improve the capacity of the bill to deal with the complex and difficult problems which inhibit development of Indian forest resources.

The legislation should focus in two major areas: (1) Correcting existing deficiencies in operations, policy, and statutory authorities; and (2) Providing the means necessary to strengthen government-to-government working partnerships between the United States and Indian Tribes in managing Indian forests.

Correct Existing Deficiencies

1. A firm statutory basis for maintenance of an Indian forestry program to fulfill federal trust responsibilities should be established. Such legislation should recognize the existence of the trust responsibility and comprehensively describe its scope. This statutory basis should: (a) enunciate a policy that the species composition, stocking level, growth rate and stand conditions of Indian forest lands are to be managed so as to secure maximum benefits of sustained yield management to their Indian owners; (b) institute a reporting requirement on the amount and location of Indian forest lands in need of reforestation or other silvicultural treatment to ensure that they are managed in accordance with management plans; (c) require the United States to fulfill its fiduciary obligations for the management of Indian forests by undertaking "forest and woodland management activities" to meet the objectives set forth in Section 201; (d) establish authority for long-term fiscal support for performing necessary "forest or woodland management activities"; and (e) recognize and provide for the roles of the BIA and tribal organizations in effectuating the trust.

This statutory basis would serve as the cornerstone for undertaking the long-term, comprehensive steps required to develop the full potential benefits attainable from proper management of Indian forest resources.

2. There is a need for an in-depth, nation-wide, independent analysis of the Indian forestry program to determine the status of and establish the future direction for the Indian forestry program. The purpose of the evaluation would be to compare management on Indian lands with what's being done elsewhere, identify strengths and weaknesses, and develop alternative approaches for correcting deficiencies. We are aware that the Committee has requested that GAO conduct a limited review of the Indian forestry program. Upon review of the intended scope of the study, however, we believe that further in-depth analysis will be required to establish a firm foundation for building the future. At the June 8, 1989 hearing on Indian Forestry conducted by the Special Investigations Committee on Indian Affairs, the need for such an assessment was supported by every witness, including representatives from the Administration.

3. The BIA, in conjunction with tribal governments, should establish standards to ensure that adequate staff and funds are provided to fulfill the federal trust responsibility. However, those standards must be sufficiently flexible as to address wide diversity in the character of the resources and the needs and interests of Indian beneficiaries of the trust on each reservation.

   In fulfilling its trust responsibilities for long-term stewardship and full development of Indian resources, the United States should utilize all the care, diligence, and skill at its command to ensure that the assets of the trust are managed to the "state-of-the-art." Indian forest resources have not been and are not now being managed in accordance with the state-of-the-art. Indian forest management has never received adequate funding to fully develop the potential of Indian forest resources, or even funding comparable to that authorized for other public agencies.

   Underfunding for management of Indian forest resources has resulted in: (1) impaired development and protection of forest resources; (2) inadequate staffing levels; and (3) diminished forest productivity.

   The "bottom line" is that Indian tribes are suffering substantial losses in potential income and employment benefits from the inadequate funding levels provided by the federal government. Since 1975, from $12 million to $39 million in stumpage income has been lost annually from the failure to fully harvest the allowable cut from Indian lands. Substantial losses are accruing from the inability to effectively contend with losses from wildfire, insects, disease, and trespass. Prospects for increased future yields from Indian forests are diminishing due to the inability to establish fully regulated forests, plan silvicultural treatments, and institute intensive management practices.

4. We support the language currently contained in Section 202 of S.1289 which confirms the existing approach to handling administrative deductions from proceeds of timber sales. These deductions have been the major source of support for many tribal forestry programs as well as reforestation activities.

5. Administrative roadblocks that impede progress and bleed the system of resources needed for more productive purposes should be reduced or eliminated. A major source of frustration among BIA and tribal forestry personnel is that administrative burdens inhibit the ability to get the job done while consuming scarce financial resources. One aspect of an independent assessment of the Indian

forestry program should be the review of relevant portions of the BIAM and CFR to determine if procedures can be streamlined to alleviate the paperwork burden while still preserving trust protections. In developing PL 100-472, the Committee became aware of the significance and importance of having a tribal review of internal operational guidelines of the BIA pertaining to administration of the Indian Self-Determination Act. We believe a similar review should be made of rules, policies, and procedures governing Indian forestry to identify areas that would benefit from streamlining or that should be exposed to greater scrutiny via provisions of the Administrative Procedures Act. That review would enable the Committee to actively legislate to correct problem areas and clarify areas subject to Secretarial discretion.

Financial administration is one area of particular need. Consideration should be given to authorizing the establishment of interest-bearing special trust accounts for Indian forestry in a manner similar to those available to the Bureau of Land Management and U.S. Forest Service. This account would allow the accumulation of funds derived from such items as payments for road use fees, private contributions, and special federal appropriations for such purposes as forest improvement and maintenance of forest transportation systems.

6. We support the Indian Intern program as provided for in Section 301(a), but suggest that the minimum number of positions be increased to 20. While the Intern Program would be beneficial, it cannot hope to meet the needs of tribes for a cadre of well-qualified Indian professionals by itself. Only about one-sixth of the professional forestry positions within the BIA are occupied by Native Americans and nationwide, less than 100 Native American students are enrolled in accredited natural resource management programs. We believe that a more ambitious and expansive program should be developed to encourage more Native Americans to pursue careers in natural resource management, particularly at the middle and secondary school levels.

7. We also recommend that an additional program and authorization be established for training BIA and tribal staff. Three areas are of particular importance. First, staff need orientation sessions to familiarize them with the nature of the trust responsibility and the roles of tribal governments and the Administration in establishing policy direction. The Indian beneficiaries and officers responsible for administering the trust at the field management level must have a continuing and direct relationship. Bureau of Indian Affairs (BIA) officials must be accountable for management actions and aware of the political and socioeconomic aspects of their decisions upon the tribal community. Second, proficiency levels need to be maintained and improved through continuing education. Third, resources should be made available to provide training and assistance in development of Indian forestry-based enterprises and marketing.

8. Statutory authority should be established to permit Interior Department agencies to enter into cooperative agreements with Indian tribes. Such an arrangement would encourage the development of valuable forestry skills in Indian communities while providing needed services to Interior agencies. PL94-148 provides such authority for the U.S. Forest Service; consideration should be given to amending this statute to include Interior.

9. Reservation road systems are deteriorating, resulting in increased costs of management and removal of forest products. Appropriations authority should be established to maintain a forest road system adequate to: (1) provide access for forest management activities; (2) reduce loss from wildfire, insects, and disease; (3) transport forest products; (4) provide access for traditional and multiple use;

and (5) increase efficiency in timber sales administration. Use of a forest roads system should be controlled by policy established by tribal governments in consultation with the BIA.

There has long been a need for Federal investment in forest access and transportation systems. Under current practice, road development costs are largely borne by timber sales. Once the timber is removed, some other means of maintaining the road system for access and development is necessary. The ability to hold money in "X-Year" trust accounts to repair and replace forest roads would greatly enhance the capacity of tribes to maintain an adequate road system. Highway Trust Fund monies have sometimes been available; however, the ability of tribes to control access to reservation lands may be diminished if these funds are employed.

10. Forest trespass problems are common and particularly severe where individual allotments are involved, as on our reservation. The primary problem in this area is that the legal means for handling trespass cases involving Indian forest resources are woefully deficient. It is unlikely that the Department of Justice and the federal courts will ever have the interest or the capacity to process trespass cases through the federal judicial system. Section 203 of S.1289 should be revised to provide the means necessary to deter trespass activity. Consideration should be given to processing civil trespass cases through tribal judicial systems, including the provision of some means to enforce tribal judgments in state or federal courts. A system to enable federal or state courts to defer prosecution of trespass actions to tribal courts should also be considered.

Strengthen Tribal Capacities

1. Provide for base level funding of tribal forestry programs and establish a funding allocation system that gives tribal programs at least the same priority and consideration as those operated by the BIA.

The future promises increased tribal participation and involvement in the management of their forest resources. S. 1289 should provide for that eventuality by establishing a requirement to provide base level funding for tribal forestry programs as well as those operated by the BIA.

The most significant development in the management of Indian forest resources within the last decade has been the emergence of self-determination, the right of Indians to make their own choices and decisions. Self-determination is beginning to become a reality as tribes choose to undertake increasing responsibility for managing their own affairs. However, tribal initiatives have often been frustrated by cumbersome contracting procedures and budgeting and fiscal accounting processes employed within the BIA.

We have found it extremely difficult to maintain funding levels to support our forestry program and field activities. Our forestry program has not participated in funding increases to the same degree as the BIA's. The BIA's fiscal allocation process has consistently satisfied the needs and priorities of its own bureaucracy at the expense of funding for on-the-ground services and tribal programs.

Administrative decisions in the BIA's budgeting and contracting processes still operate under the "Buy Indian" mentality; tribal organizations that depend upon contracts are often treated as expendable conveniences rather than permanent

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institutions established in response to self-determination. The lack of stability and reliability of funds generates job insecurity for tribal employees and interferes with our ability to effectively operate forest management programs.

2. The National Indian Forest and Woodland Enhancement Act should include measures to encourage individuals to seek employment with Indian tribes. We believe that tribes will assume a greater and greater role in managing their resources over time. To provide for that eventuality, we suggest that the legislation provide incentives to attract and retain well-qualified Indian and non-Indian professionals to assist them in the management of their forest resources.

We share the sentiment that Indian people should be assuming more and more prominent roles in the management of their resources, but recognize that, for the foreseeable future, we will be faced with the stark reality that there will be an extreme shortage of Indians who are professionally trained in natural resource management fields.

Tribes are likely to continue to face substantial challenges in obtaining good personnel for management of their forest resources. Given the imminent retirement of a large number of practicing foresters and drastically diminished enrollment in accredited natural resource management programs, competition for well-qualified individuals will be intensify over the course of the several years. It is clear that innovative and competitive programs will be required to provide tribes with to forest management expertise.

Substantial changes in forestry organizations will be necessary to effectively meet the challenges ahead. Alternative ways of getting the job done will have to be considered; increased reliance will have to be placed on para-professionals and people trained in disciplines other than forestry. The key will be in quality of personnel, not numbers. Most likely, forestry programs will have to depend upon a small core staff to provide strong technical leadership; skills of core staff will have to be supplemented by outside, specialized expertise on an as-needed basis.

Existing regulations and staffing patterns should be reviewed as part of the independent assessment of the Indian forestry program to determine how to prepare for the changes that will inevitably occur.

There is a need for a comprehensive overhaul of the personnel system for Indian forestry. Some of the elements in such an overhaul would include: (1) review of position responsibilities and classifications in the BIA's Division of Forestry, in particular consideration should be given to the establishment of a para-professional program to acknowledge and reward knowledgeable personnel who lack the college credentials to be classified as "professionals" and to the necessity to provide for specialists; (2) a training program to familiarize forestry personnel with problems and requirements unique to Indian forestry and to develop skill levels; (3) the development of a program to provide solid, forestry career opportunities for non-Indians within the BIA; and (4) the establishment of a national Tribal Service System that would provide continuity of employment to tribal staff and tribes with access to benefits packages which are comparable to those available to private industry or other public service employees. Consideration should be also be given to providing a means for individuals leaving federal service to become employed by Indian tribes to continue to accrue retirement and medical benefits as if they were still employed by the federal government.

3. S.1289 should support efforts to consolidate Indian forest lands into more manageable units. The checkerboard ownership which has resulted from the dissipation of the tribal land base under the General Allotment Act of 1887 is one of the most difficult problems confronting improved management of Indian forests. The dissemination and subsequent alienation of Indian lands through allotment, sale and inheritance broke apart logical management units, prevented the orderly development of forest properties, usually reduced the value of surrounding Indian holdings, and increased risk of loss to fire, insects, and disease. Instead of a unified forest ownership which could be administered consistently and in accordance with sound principles of management, many of the forests were broken up into small properties, each of which had to be handled individually and in response to the immediate needs and requirements of its owners. Naturally, the problems of administration were greatly multiplied, costs were increased, and comprehensive management was made far more difficult.

   The business of growing trees involves long-term horizons for investment. Decades are required to produce a commercial timber crop. The rapidly changing status of the Indian forest lands resulting from allotment, alienation of land from Indian owners, further subdivision of ownership through inheritance, and cession have been a constant threat to the practice of forestry. In passing PL 100-638, Congress supported our efforts to address long-standing problems of fragmented ownership patterns on the Quinault Reservation.

   S.1289 should encourage and facilitate tribal consolidation of lands for forest management purposes. While the appropriation of funds for this purpose would certainly be welcome, other legislative means to address this area would be valuable.

   We request that the Committee consider providing authority to expend appropriated funds for forest management purposes on fee lands acquired by Indian tribes for the purpose of forest land consolidation. On the Quinault Reservation, we have undertaken a program to acquire and develop reservation lands to insure that a commercially viable forest will exist in the future. Several thousand acres of the lands we have been able to purchase are in need of rehabilitation to place them back into production. Because mortgage liens prevent the property from being placed in trust status, however, the BIA will not permit the use of appropriated funds for treatment. Without treatment this land could remain poorly utilized for the length of the mortgage and site conditions will deteriorate; not only will years of productivity be lost, but costs of rehabilitation will escalate.

   We also request the Committee to consider making BIA Forestry responsible for accurate valuation of forest land (fee and trust) for purposes of tribal forest land consolidation. We have had extreme difficulty in obtaining timely appraisals which reflect true market values due to the lack of clarity in responsibility between the BIA's Branches of Forestry and Realty. We believe the Branch of Forestry rather than the Branch of Realty has the requisite knowledge. If this problem can be alleviated, our ability to acquire available forest properties will be greatly enhanced.

3. Provide financial assistance to develop viable, competitive Indian enterprises. At many locations, Indian timber continues to serve as a major source of supply to help support non-Indian economies. Indian enterprise development is lagging while unemployment rates on Indian reservations soar. Tribes are striving to increase benefits from their forest resources and assume greater control of their development and management. Consideration should be given to enacting

legislative authority to establish a revolving fund that would match tribal and federal investments in forestry improvements and Indian enterprises.

4. The legislation should recognize and strengthen sovereign powers of tribal governments to protect their own heritage, consistent with tribal laws, tradition, and religious values. A number of federal statutes (e.g. National Historic Preservation Act, National Environmental Policy Act, and Endangered Species Act) have increased the difficulty of managing forest resources to meet the needs of their Indian owners. For example, the National Historic Preservation Act of 1966 requires archaeological surveys and prior clearances for impacts upon sites of potential historical significance. Major forestry management actions, including timber sales, cannot be undertaken until NHPA clearance is obtained. In some areas, the inability to secure archaeological clearances has brought timber sales to a standstill. Requirements to provide archaeological assessments stem from an interpretation that participation by BIA officials in approving forest management activities constitutes a federal action. Tribal governments possess inherent powers of sovereignty. Comprehensive forestry legislation should establish statutory requirements for the BIA to defer to tribal laws and regulations pertaining to historic preservation, forest practices, or other environmental protection matters.

Conclusion

Once, our Reservation's forests supported thousands of jobs, produced billions of board feet of timber, and generated millions of dollars to the regional economy. Unfortunately, decades of neglect have left behind immense resource management challenges and a legacy of impoverishment. With adequate investment in our forest resources, we are confident that our forests can once again become a prominent contributor to the economic health of our people and the region.

There are many areas of the Indian forestry program in need of positive action. We believe a thorough evaluation of the Indian forestry program is essential to the development of cohesive and comprehensive legislation. In our view, it is unlikely that such an assessment can be made solely through the legislative process. We suggest that a working group, consisting of representatives of the tribes, the BIA, and outside experts be chartered to review the comments received on S.1289, analyze the Indian forestry program and develop recommendations, including any necessary legislative initiatives, for consideration by the tribes and the Administration.

Tribes must develop their own visions for the future and work to shape their own destiny. Together in true partnership, the tribes, the Intertribal Timber Council, the BIA Division of Forestry, and Congress can work to build a more productive and hopeful future for Indian forestry.

It is clear that tribal involvement in the management of their resources must be encouraged and strengthened. Indeed, the fundamental character of the federal-tribal relationship must be changed from paternalistic suppression to advocacy of tribal visions for self-determination.

We would like to share a vision with you. It is a vision of a reservation with healthy forests which are managed in concert with our other resources to further the economic and social well being of our people. It is a vision of competitive Indian enterprises which provide meaningful employment, build our self-esteem, and reduce our dependency on social welfare programs. It is a vision of a strong tribal government working in full partnership with the United States. It is a vision of proud, vigorous, and productive Quinault people. It is our vision of economic and political self-determination. We ask your help in making that vision become reality.

THE NAVAJO NATION

LEONARD HASKIE
INTERIM CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

IRVING BILLY
INTERIM VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

TESTIMONY OF IRVING BILLY

INTERIM VICE CHAIRMAN OF THE NAVAJO NATION

ON S. 1289

THE NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

OCTOBER 19, 1989

Mr. Chairman, members of the Select Committee on Indian Affairs, I am Irving Billy, Interim Vice Chairman for the Navajo Nation. On behalf of the Navajo Nation I would like to express my appreciation for this opportunity to appear before you today to discuss S. 1289, the National Indian Forest and Woodland Enhancement Act. We are very pleased to see this proposed legislation, as it indicates that the Senate recognizes the need

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to ensure that good management of Indian forests must occur within the federal trust responsibility owed to Indian tribes.

The Navajo Nation contains an estimated 4,559,045 acres of forest which is identified as 523,000 acres of prime Ponderosa Pine timber and 4,036,045 acres of Pinyon and Juniper. Numerous riparian areas exist, but no estimates have been prepared regarding these. The forest areas comprise one third (1/3) of the entire Navajo lands. The Navajo forest area is larger than the states of Massachusetts or New Jersey and contains over 2 billion board feet of timber and 15.7 million cords of Pinyon and Juniper. The timber is used to support the Tribe's sawmill enterprise which supports directly and indirectly over 700 jobs in the local community and surrounding non-Navajo economy.

At this time, only 11% of the Navajo forest lands have been included in a management plan. The balance of the forests have not even been inventoried for preparation of management planning. The BIA has limited its management direction to working with the timber areas for supplying timber stumpage to sawmills. Although the Navajo forests are used for timber purposes, 90% of the forest is comprised of non-timber species such as pinyon, juniper, oak, and many lesser species. These are used extensively for fuel, wood, and nuts for food by many of our people for subsistence. We are

extremely concerned that the lack of management levels and controls on these acreages will result in our inability to manage them for business and economic development. In turn, this lack of management could result in the loss of our forestry resource which would adversely affect our people, the surrounding non-Indian communities, and the United States as a whole.

The Navajo forests do not consist of just timber and trees, but are comprised of a unique melding of many resources into a total forest environment. It is extremely important that this view be realized and that our planning be done utilizing Integrated Resource Management Planning, to ensure all resource needs are met.

There is a clear understanding that the Indian forest is a federal trust responsibility, however there is no legislation that clearly mandates management of the forests. Under current authorizations for forest management expenditures, monies are subject to reprogramming for purposes other than forestry, which has happened on the Navajo Area. This makes it impossible to operate the long term management programs that are essential to forestry growth plans which must cover 120 years. Additionally, this lack of mandate and needed management levels, creates inequity in management levels applied between the various tribes. For example, the Navajo forest is the largest; however, the management

authorization for the Navajo Area is eighth out of twelve. It seems clear that a sound Indian forestry program is needed with a statutory base to enable the BIA to meet the trust responsibility and to ensure the future of the Indian forests for the benefits of both the Indian people and the United States.

With these preceding comments, I would like to point out a few specific concerns we have regarding the proposed legislation.

Definition of Forest and Woodlands. Section 103 of the legislation proposes that we define the terms "forest and woodland." This is apparently due to the fact that previously, the woodland portion of our forests was not recognized nor managed. We feel that this can best be handled by properly defining the total forest to include the woodland and riparian elements of the forest. The division of the forest types serves only to confuse management planning and levels of responsibility. Further in the definitions, the bill refers to "commercial" forests. We are concerned that the use of this designation somehow elevates parts of the forest as warranting more time, concern, and funding. All of the forest needs managing regardless of whether the forest area is used for commercial purposes or for care of the environment and subsistence of our people.

Total Forest Management. It is also important that language be added to Section 103, Subsection 4 of the legislation to specifically mandate full Integrated Resource Management Planning. For too many years, our management has aimed at managing for a specific commodity such as timber, deer or water. This bill needs to prepare the way and demand that the total forest environment is managed as a unit, with each resource being utilized to its capacity within the recognized plan. Navajo resources lag behind the rest of the Nation in management and this needs to be corrected.

Administrative deductions. The funds referred to in Section 202 have been withheld for management, however two attempts have been made to remand tribal monies into the U.S. Treasury. We are dependent upon these funds for the basic forest planning necessary to ensure the future health of our resources and the continued self-determination of our people. We are heartened by this proposal to prevent these funds from being diverted, however, we are concerned that this bill does not go far enough to encourage tribes to attain self-determination. The Navajo Nation has very good financial and forest management capabilities. We would like this bill to enable us to directly receive the revenues and forest management deductions without the current red tape of transfers and contracts. After all these are Tribal revenues.

Forest Roads. There has not been a forest road maintenance plan on the Navajo forest. We are experiencing erosion and see many of the older roads turned into drainage canals during rainstorms. In our case, the Pine forest area is divided among three BIA agencies and there is very little or no coordination between them. The result is poor maintenance on existing or new roads. The investment that is put in the roads in a timber sale is lost, and many times conditions are worsened. We strongly recommend that the Committee establish a fund for road maintenance, as roads are essential to forest management as well as recreational and other uses.

Cultural and Historical, and Environment. The forest management has been hampered greatly by the lack of responsible direction in evaluating and clearing areas for archaeological, historical, and environmental concerns. We would encourage that language be added to the legislation to clarify and give proper recognition to these resources and the means to manage them in our total forest management.

Indian Education. The inclusion of Section 301 is excellent and the Committee is to be commended. We are concerned that it be worded consistently to ensure that the interns may be from Tribal forestry departments and that their service time may be with the Tribes. In one portion this is mentioned, but elsewhere it seems

to indicate only the BIA. If self-determination is a purpose then the Tribes must be included throughout.

Authorization of Appropriation. The value of any piece of legislation is only as good as the degree to which it is actually implemented and enforced. For this Act to be effectively implemented a funding level must be included in the bill language. It has been our experience, that funding levels that are identified as "sums as are necessary" do not receive the requisite level of attention. The forestry funding levels have been below amounts needed to conduct management work in accordance with the trust responsibility for many years. We would recommend that Section 401 of this bill carry a specific funding level based upon the current funding plus the amount needed to implement the recommendations in the BIA staffing and needs assessment, to establish an adequate base level of funding.

In conclusion, I want to thank the Committee for this opportunity to comment upon the proposed legislation. This bill represents an excellent beginning which we strongly support. We look forward to working with you regarding the concerns we have expressed for passage of this bill. In addition, we respectfully request that the record be held open for two weeks and we would

like to supplement our oral comments with a section-by-section analysis of the bill. Again, we thank you for your efforts regarding S. 1289 and we hope that you will incorporate our concerns into the final legislation.

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
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TESTIMONY OF THE CONFEDERATED SALISH AND

KOOTENAI TRIBES ON S.B. 1289,

THE NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT

Mr. Chairman and members of the Senate Select Committee on Indian Affairs, the Confederated Salish and Kootenai Tribes of the Flathead Nation are pleased to see the introduction of S. 1289 and to provide testimony in support of the bill. The Tribes appreciate Senator Mc Cain's introduction of the bill and Senators Inouye, Murkowski, Cochran and Gorton for co-sponsoring it.

The Tribes with their significant timberlands are highly interested in this bill. The Tribes manage approximately 454,805 acres of forested lands, of this acreage 322,000 are designated as commercial timberlands. The remaining acres are designated as wilderness lands, primitive areas and non-commercial lands. From the commercial timberlands the Tribes expect to gross around three million dollars in 1990.

The Tribal timber program employees 133 full-time Tribal members, 454 part-time and 394 non-members full-time. This employment generates approximately 15 million dollars annually in wages and salaries.

The Tribes also manage their forest lands for cultural, religious, hunting, fishing, grazing, watershed and recreational uses.

The Tribes own and operate a post and pole enterprise which processes three to five million board feet of saw logs annually and also processes a million pieces of post and pole products. The enterprise directly employees 80 tribal members and approximately 160 to 200 members who cut timber from tribal lands for sale to the enterprise.

While the overall purposes of the bill as set out in Section 102 adequately address the Tribal interests in managing Tribally owned forest lands there are provisions in the bill which require further consideration.

SECTION 103

The existing definitions in Section 103 fail to provide for non-commercial and woodland areas. The Tribes suggest the use of the words "forest lands" for these non-commercial timber lands. Under the definition for "forest or woodland management activities" the following should be included after the words "means all activities, including" but not limited to.

SECTION 201

Under Section 201 of the bill, the Tribes suggest that the title should be changed so as to include "non-commercial" in the title and throughout the section as appropriate. Also within this section on page 13, line 4 the words "old growth" should be deleted and in their stead replaced with "timber and woodland".

SECTION 202

The Tribes support the 10 percent restriction in Section 202 on the administrative fee deduction. Language should be added so as to require the use of the fees within two years of collection, as is currently provided for by regulation. The Tribes favor the language which requires the use of the fees on the reservation from which they are obtained.

SECTION 301

The establishment in Section 301 of an intern program is supported by the Tribes, however the Tribes believe this program should be expanded beyond students. It should include a provision for Indians, who are foresters, to have their education loans paid if they agree to work for a Tribe or the Bureau of Indian Affairs for a given period of time. This provision would begin to immediately fulfill a part of the need to have Indian foresters working directly on Tribal forest lands. Also to broaden the experience of these Indian foresters, consideration should be given to including a provision for these individuals to work outside of the Tribal and BIA forestry programs for a given period of time and still have their education loans repaid if they commit to return to the Tribe or the BIA for employment.

The Confederated Salish and Kootenai Tribes would also like to see the bill amended to include a provision for federal income tax exemption of Tribal members who harvest post and poles from Tribal lands for sale to the Tribal post and pole enterprise. Under the 1956 decision of the United States Supreme Court in Squire v. Capoeman individual tribal members are exempt from federal income taxation on income earned from the sale of products directly derived from the allotted land they own as an individual, the lower federal courts have not extended this exemption to income earned by Tribal members from the sale of products directly derived from Tribal lands.

In 1934, Congress through the Indian Reorganization Act repudiated the allotment of Tribal lands to individual members and stopped the allotment process. The allotting of Tribal lands was devastating to Indian country and allowed for the passing out of Indian ownership much of the best productive lands within the Flathead Reservation.

As a consequence there few Tribal members who are able to avail themselves of the exemption from federal income taxation set forth in the Squire v. Capoeman decision.

The practice followed by the Tribal members, who harvest post and poles, falls within the standard set out by the Court in Capoeman except that they do not hold title to the land as an individual. Ownership of the land from which the post and poles are harvested is held by the members as a Tribe. The Tribal Council assigns cutting blocks to individual members who then cut the trees which are processed into post and poles by the Tribal post and pole enterprise. The income from these sales by individual members is from products directly derived from the land.

If this bill were amended such an exemption would alleviate the tax burden from Tribal members who receive a very modest income from their post and pole activities.

We urge you to give consideration to our recommended changes and to amending the bill regarding federal income taxation under the previously discussed situation.

TESTIMONY ON S-1289
"THE NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT"
Submitted to: Select Committee on Indian Affairs
Submitted by: Reno Johnson, Sr., on behalf of
the White Mountain Apache Tribe of Arizona

Mr. Chairman and members of the Committee, the White Mountain Apache Tribe wishes to express its appreciation to the Committee for the concern it has shown in proposing the National Indian Forest and Woodland Enhancement Act.

My name is Reno Johnson, Sr., and I am Chairman of the White Mountain Apache Tribe. Our homeland, the Fort Apache Indian Reservation contains 1.6 million acres and is home to approximately 12,000 Apache people. Over 800,000 acres of our reservation is comprised of woodland and commercial timber stands. The forest of the Fort Apache Indian Reservation have for many years provided the Apache people with jobs, increasing opportunities, a rising standard of living, and all of the intangible benefits that flow from living in one of the most beautiful areas of this country.

Throughout much of Indian country, Indian forest form the basis of tribal economies. The economy of the White Mountain Apache Tribe is closely tied to the reservation's natural resource base. The predominant sources of our livelihood include timber operations, tourism, outdoor recreation, and livestock management. The White Mountain Apache Tribe owns and operates a sawmill that employs 400 people on a permanent basis. Most of the employees are tribal members. The scenic forest

resource of our reservation also supports a substantial level of tourist activity. The reservation includes 25 excellent trout fishing lakes, 120 miles of trout stream, and more than 7,000 camp sites.

The lands of the Fort Apache Indian Reservation and its natural resources are the key to the future economic development of the White Mountain Apache Tribe. The most crucial of these resources is perhaps the timber. Our resources had they been properly managed would most assuredly provide an economically sound agricultural and industrial economy which would assure the future of the White Mountain Apache Tribe for generations to come.

The National Indian Forest and Woodland Enhancement Act offers an opportunity to correct long standing problems of BIA mismanagement and to allow the tribes to organize and give new direction to the management of Indian timber resources. The Act, as its ultimate end, should seek the establishment of a federal and tribal partnership designed to bring about increased productivity of the forest resource and the delivery of maximum benefits to the Indian people who are the beneficial owners of the land, while at the same time securing overall economic stability and growth on Indian reservations through wise planning and development.

ECONOMIC DEVELOPMENT THROUGH BETTER UTILIZATION OF TRIBAL FOREST RESOURCES

Congress, has adopted the fundamental principle that the future of Indian people should be determined by Indian people. This principle of self-determination is the cornerstone of federal Indian policy. True self-determination can only occur when the resources necessary to implement policy decisions and achieve desired objectives are readily available. True self determination can only occur in an atmosphere of continual economic development. Economic development allows the tribes not only to decide what is best for the general tribal welfare, but also to implement those decisions.

For many Indian reservations, including the Fort Apache Indian Reservation, the first step in economic development is identifying and evaluating in their present state existing assets, taking essential steps to restore those resources which have been mismanaged and then maximizing the return received from those assets. The timber resource is critical in the stability and development of our reservation economy. The potential return from that resource is only being partially tapped. In order to receive the greatest possible benefit, it is first necessary to completely understand the resource.

There is a need in Indian country for the development and implementation of a total resource management policy. No longer can we look at the forest simply as a timber products producer,

we must look at the forest as a multiple use resource requiring intergrated management planning based upon tribally determined objectives. Range management, recreation, watershed, water quality, fisheries and wildlife habitat are all values which must be integrated into our forest plans. Armed with an understanding of the complete potential of the resource, it then becomes a matter of establishing well-defined objectives and designing a course of progress which will allow the tribes to systematically arrive at those objectives. The Bureau of Indian Affairs should be required to develop a program of total resource management and planning designed to maximize the economic return from all available tribal resources.

Not only must the commercial forest be intensely managed, but the Woodland Resource must also be taken into consideration. The woodland areas of our reservation hold the potential for additional resources which with proper management could further contribute to the overall economy of the reservation. There are many non-timber items which readily come to mind when one thinks of the woodland areas, firewood and fence post are two examples. The woodland is also a source of many foods important to Indian people. There must be an increase in the effort to study, manage, and utilize the woodland resource.

Critical in any effort to develop a resource is the concept of successful marketing. All economies depend on reliable and stable market generating increasing economic opportunities.

Marketing analysis can mean the difference between success and failure. The Bureau of Indian Affairs should develop a marketing policy designed to open up the broadest possible economic opportunities for timber producing tribes. Where markets do not exist, new products should be created and new markets opened up. The search for non-traditional products and their markets should be encouraged.

Another opportunity for maximizing the potential of the Indian forest resource is the development of a relationship with the National Forests which in many cases are adjacent to Indian forest. There should be a required cooperation on the part of the Forest Service in an effort to coordinate those activities occurring on national forest land which in some way impact tribal lands. The Forest Service must become an active participant in the government-to-government relationship existing between the tribe's and the federal government. In addition, the Forest Service can provide valuable research, technology and technical assistance to tribal governments searching for ways to improve the Indian forest lands. Finally, programs now available from the Forest Service to state and private entities should be extended to the tribes. It is also possible that the national forest can become readily available supplementary sources of timber for Indian Tribes having their own timber processing plants. In some cases, it might be appropriate to provide timber set-asides for qualified Indian Tribes. It might

also be appropriate to provide certain business incentives which allow Indian Tribes to more readily compete for national forest timber sales. There are numerous ways that the national forest service can benefit from an increased participation by Indian Tribes in timber harvest activities occurring in the national forest.

RELATED ISSUES

Throughout the entire range of timber management practices, it is imperative that there be a maximum involvement of tribal members in decision making and implementation. Tribal members must be responsible for the development of policy, for the making of decisions that affect the forest, for implementation of the policy, and for evaluation and necessary revision of that policy. I believe that the best managers of Indian natural resources are the Indian people themselves acting in concert with the federal trustee. These people derive their living from the forest resources and must be intimately involved in decisions affecting the forest. It is on the correct management of these resources that there future depends. In order for any forest management plan to succeed, it must have the support of those whose interest it is designed to serve. Only when Indian people are allowed to take full charge of their destiny, will that destiny be secured.

Perhaps the key provisions of the Forest Enhancement Act are those provisions related to the Education of Indian

Foresters. I particularly applaud the Committees' efforts in this respect. Indian people trained in the modern techniques of forestry, coupled with an inner sense of respect for the land and its resources will do much to insure that those resources remain beautiful and productive for many generations to come.

Finally, as we go about implementing this new direction for our Indian forest, we must take into careful consideration those who were the first caretakers of the forest. We must be sensitive to the cultural and religious issues which are a part of our everyday lives and will remain a part of the legacy we leave to our children. Oftentimes, in Indian Country, there are certain things that are simply more important than economic development. Indian tribal governments should feel unhampered in the expression of cultural and religious beliefs when making decisions concerning management of the forest. Our sacred lands will remain sacred only so long as we exercise reverence and respect.

In summary, it is my hope that Senator McCain's invitation that this Bill serve as a focal point for discussion and the generation of input from the Indian Tribes be taken fully to heart. We have the opportunity to create a legislative mechanism which will assist Indian Tribes in achieving true self-determination through economic development resulting from a more effective management of Indian timber lands. These benefits will accrue not only to Indian people, but to all

Americans. After a thorough revision and subsequent review of the Act, the White Mountain Apache Tribe would recommend its passage.

I have attached a detailed analysis of the Bill containing suggested changes for the Committee's later review. After the hearing we would like to reserve the right to submit additional comments. Once again, thank you for this opportunity.

EXPLANATION OF PROPOSED AMENDMENTS TO S-1289

Section 101; Findings (a):

1. "Management" of the forest should be included in the findings as a part of the federal trust responsibility on Page 3, Line 4.

Section 102; Purposes "Management" of the forest should be included among the Bill's purposes at Page 4, Line 18.

3. Is there a distinction between "trust responsibility" and "fiduciary obligation" at Page 4, Line 20?

4. The dedication of forest administrative deductions back to the Indian forest land should be a stated purpose of the Bill at new number 6.

5. The provision of forest related marketing and business development should be included as a purpose of the Bill at new subparagraph number 7.

6. A stated purpose of the Bill should be to supplement the authority of the Snyder Act for operation of the BIA Trust Forestry Program, making it clear that this legislation is not intended to eliminate the Snyder Act as a backup authority for forestry programs.

Section 103 Definitions

1. The definitions of "commercial forest lands" and "Woodland" and "Commercial Woodland" at Page 5, Line 13 through Page 6, Line 2 are very complicated and do not conform to the BIA's standard "forest land classification system".

2. Management activities for non-commercial forestry uses of the forest ought to be included as a subsection "j" in the definition of "forest and woodland management activities" at Page 8, Line 17.

3. Any references limiting the Bill's applicability to "commercial" timber lands and woodlands should be deleted at Page 8, Lines 18 and 19 and Page 9, Line 1.

4. The percentage of Indian ownership required for construction companies eligible for special federal recognition seems to be an open question. This should be clarified at Page 11, Line 22.

5. All possibilities of abuse by a non-Indian company hiring a front-office Indian, should be eliminated.

6. Item "k" under definitions at Page 8, Line 17 should be added for "intergrated resource management planning" for the coordinated use of forest resources.

Section 201 Management of Commercial Forest and Woodlands.

1. Any references limiting the application of the Bill to "Commercial Forest Land" should be stricken from this section. The trust responsibility, of course, extends to all aspects of the forest at Page 12, Line 15, 17 and elsewhere.

2. The sale of forest products only when in excess of the owner's need, if that is what is intended, is awkwardly stated and ought to be reworded at Page 13, Line 24. It should also be

stated that such sales will be made only with the permission of the owner.

3. The description of sustained yield at Page 15, Line 13-17 should be carefully reviewed and structured to properly cover the particular circumstances of all tribes.

4. The role of intergrated resource management planning should be specifically recognized in this section.

5. The Bureau should be required to assist the tribes in preparing for 638 contracting, with said contract to be effective by the end of a certain period if the tribe wishes to assume part or all of the federal forest management responsibilities.

6. With respect to Section 201, (7), it should be explained for what purpose and to what end "water runoff" should be regulated. Any party whose interest is adverse to that of the Tribe should not benefit at the expense of the tribe by this water regulation.

7. Careful consideration should be given to the fact that when a tribe contracts under the 638 Program, it frequently ends up with much less money than was originally available to the Bureau to carry out the job. In other words, the 638 funding which would be available would not be fully available for development and management of the forest. One of the major reasons for this is the fact that BIA Administrative Cost are excessive due to what is often described as a duplication of effort on the part of the Tribe and the Bureau and sometimes

overzealous Bureau contract monitoring. Care should be taken to assure that the maximum dollar benefit derives to development of the forest through the 638 program.

8. It is imperative that there be a tribal forestry department established within each tribe wishing to manage its own forest resources. Such a department would assume the responsibility for management of the forest resource and would direct the Bureau of Indian Affairs concerning the rendering of any technical or other support deemed necessary by the Tribe.

Section 202; Administrative Fee Deduction.

1. Does the expression "notwithstanding the provisions of 25 U.S.C. §413" totally eliminate any subsequent application of that statute to timber receipts, so that no additional fees can be collected (in addition to deductions collected and returned to the Indian forest) for deposit into the miscellaneous receipts of the U.S. Treasury, at Page 14, Line 19?

2. "Forest and woodland products" would include according to the definitions, "manufactured materials", so that theoretically the administrative deduction percentage would also be applied to sawmill receipts, etc, Page 14, Line 21. Perhaps it would be better to insert the word "unmanufactured" as well.

3. Should the expenditure of the administrative deduction be limited to "timber sales administration or forest regeneration", Page 14, Line 22. Aren't there other potential beneficial uses of the deduction?

4. It would be more appropriate for the administrative deduction to be turned directly over to the tribal government instead of to the Bureau of Indian Affairs, at Page 15, Line 6 through 11.

5. In sum, the deduction fee should be controlled by the Tribe with the Tribe deciding how and when the money is to be spent. If the BIA retains control of the funds, then the BIA should render an annual accounting of the fund expenditures. The Bureau should fund its own functions and not use the tribe's administrative deduction money for funding governmental functions.

Section 203; Forest and Woodland Trespass.

1. A problem in Indian Country is enforcement of the law. Tribal law enforcement agencies are in place but lack the funding to carry out any additional responsibilities in this respect. Funds will be required to hire and train personnel responsible for enforcing the trespass provisions.

2. It is suggested that 180 days for promulgation of regulations is probably not sufficient. Perhaps one year would be the outside limit for promulgation of rules and this would allow adequate time for tribal comments.

Section 301; Establishment of Indian Forestry Education.

1. Authority should be provided in enabling the tribe's to enter into cooperative agreements with other interior agencies so that tribal crews can be trained and employed in

forestry/natural resources work required by other interior agencies.

2. There should be funding set aside for more than 10 intern positions. We suggest 20-25 positions as a minimum. A provision should be inserted allowing for BIA repayment of student loans obtained to complete the students forestry education. A provision should be inserted providing for student contracts with tribes as well as with the Bureau, with eligibility for educational incentives remaining the same.

3. There is a need to establish an Indian Forestry Department within each tribe where Indian foresters can do their intern work and eventually return to employment and service with the tribes.

Section 401; Authorization of Appropriations.

1. Funding authorization should be for a specific sum determined as required to meet the federal trust responsibility, Page 20, Line 5-6. It is suggested that $65 milion dollars for fiscal years 1991-95 would be sufficient, with a small addition for inflation.

2. It might be appropriate to establish a federal Indian forestry trust fund, for specified forest activities.

3. It is suggested that an incentive program be created to prompt additional tribal investment in the forest resources, such as federal matching funds for all tribal investments over a certain amount or percentage.

Finally, it is suggested that there be a provision for independent evaluation of the forestry program with the Bureau of Indian Affairs paying for the evaluation.

Other Issues.

1. All funds ultimately received by the tribes' from the forest resource should flow directly to the tribal treasury and not through the federal treasury.

2. All forest related road building activities should be funded by the BIA with tribal funds being left for other forest development activities.

3. Restoration of certain lands affected by forest harvesting activities should be given consideration with particular emphasis on preservation of rangeland for cattle production.

4. The tribe should be fully consulted and allowed to make all appropriate input into the development and implementation of BIA Forest Management Plans. No plans should be implemented without tribal approval.

5. Fire management and restoration of fire ravaged lands should be integrated into the Act.

TESTIMONY
by the
MENOMINEE INDIAN TRIBE OF WISCONSIN
to the
SENATE SELECT COMMITTEE
on
INDIAN FORESTRY LEGISLATION - S. 1289
October 19, 1989

Our testimony is divided into two parts; the first comments on the draft legislation itself, while the second addresses fundamental policies and concerns which specifically affect the relationship between the federal government and the Menominee Indian Tribe of Wisconsin.

Part I - Comments on the proposed S. 1289.

Section 101. FINDINGS.

COMMENT: We recommend that No. (4) be modified and strengthened to clearly emphasize that the federal government's forestry trust responsibility to Indian tribes is a long term commitment/ethical/moral obligation which is solemnly promised to unborn generations. The purpose of this legislation should be to establish a course which transcends our current concerns and promises a future to those yet without a voice. We believe that the term "trust responsibility" is too often a much-used but unfelt bureaucratic phrase, denigrating it to the level of "buzz word."

Section 102. PURPOSES.

COMMENT: Our feelings above also apply to No. (2), which references trust responsibility and fiduciary obligation, but does little to define their legal or spiritual meanings. Again, administrators who lack an understanding of the deep moral principles behind these terms are rarely inclined to institute actions which elevate trust resources above short term, politically mandated "compromises." Without real special status or protection, trust resources will not endure over the long time periods required for them to reach their true potential. The Menominee, as do most other timber producing tribes, manage and protect their forest land based upon a land ethic which has only recently been recognized and pursued by some non-Indian groups in our society. Reality, however, requires vigilance since the Indian land ethic (and its ability to achieve economic, social and biological harmony) is still a minority viewpoint.

Section 103. DEFINITIONS.

COMMENT: This section lacks any definition of trust responsibility or fiduciary responsibility. Without these definitions, it seems self-defeating to attempt to write Indian Forestry Legislation. The trust concept is the driving force in all forestry policy and subsequent relations between the federal government and the Indian tribes. Unfortunately, these definitions must be provided to those who will administer this legislation, if this is to be effective. Failure to manage and protect forest trust resources is directly related to the lack of commitment and the lack of accountability of the administrators at the BIA Area Office and field levels, not solely because of the budget shortfalls as is often claimed.

Section 201. MANAGEMENT OF COMMERCIAL FORESTS AND WOODLANDS.

COMMENT: All the objectives listed in this section are consistent with the stated objectives of the Menominee. We recommend that these be strengthened by adding sustained yield management principles and methods.

Section 202. ADMINISTRATIVE FEE DEDUCTION.

COMMENT: None - Menominee is already excluded from this requirement and would not be affected by its passage.

Section 203. FOREST AND WOODLAND TRESPASS.

COMMENT: This is an important concern in Indian country and one generally neglected. We support any effort to improve protection of our forest land and prosecute those who willfully violate protection laws. This subject is of such importance and complexity, however, that the 180-day limitation to promulgate fire and timber trespass regulations is insufficient. We believe a minimum of one year should be provided, with provisions for a time extension if requested by selected technical staff assigned to this effort. We understand that other federal agencies have methods to effectively control and prosecute trespass, and these methods should be reviewed for their applicability on Indian lands.

Section 301. ESTABLISHMENT OF INDIAN FORESTRY EDUCATION ASSISTANCE PROGRAMS.

COMMENT: We encourage and support any effort which attracts Indian youth into professional career paths.

If our young people can return to the reservation voluntarily, to improve and enhance the Reservation community then we have accomplished a great deal. Let us not forget, however, that the primary purpose of this legislation is to correct the deficiencies which immediately threaten the health and future of our forests. The Bureau of Indian Affairs is most urgently in need of skilled, competent forestry professionals from any community or agency, not just the Native American community. A well structured, productive forestry program which is recognized, both within and without the Department of the Interior as technically progressive and well staffed may do as well or better at attracting Indian youth into forestry as an education incentive.

Section 401. AUTHORIZATION OF APPROPRIATIONS.

COMMENT: This is a standard "such sums" authorization. A 1989 funding and staffing analysis by the Bureau of Indian Affairs revealed the Menominee forestry program was underfunded approximately $1.7 million. There is no guarantee that appropriations will be provided for this bill or will even match the current level. As a result, any real gains may not be realized.

Part II - Concerns not addressed in S. 1289.

B.I.A. ADMINISTRATIVE ORGANIZATION

While this proposed bill effectively combines, strengthens and codifies Indian forestry operations, it does not address the single major deficiency which currently impedes forestry trust services on Indian lands. The Bureau of Indian Affairs, as currently organized, maintains the technical forestry staff at the Central and Area Office levels as a staff or advisory function. Consequently, important forestry policy and procedures (with all their trust implications) are made by line administrators apart from, and often without hearing the advice of, the technical forestry staff. Although in theory the current line organization can solicit advice from the technical forestry staff, in practice the forestry staff are excluded from significant participation and certainly have no decision-making authority. The Chief Forester for the Bureau of Indian Affairs is restricted from a serious role in formulating and implementing national forestry policy or from honestly reporting to the Congress the Bureau's overall forest management program status. Without frank advice from technical/professional leadership, it is inconceivable that the Bureau of Indian Affairs will know of or apply

needed forest management techniques to Indian lands, or that Congress will get the information necessary to make adequate appropriations for these programs.

The Menominee Tribe strongly encourages Congress to consider, as part of this forestry legislation, the development of a separate trust resource division within the Bureau of Indian Affairs which, with respect to forestry, has a separate, independent line organization headed by the Chief Forester under the Assistant Secretary. Further, the Congress must insist that the Chief Forester report to them annually the status of the Indian forest management program, deficiencies it has encountered in meeting the trust, and corrective measures needed. Without this, the existing Bureau process will bumble along its current path and ultimately fail to commit to a long term trust policy to manage and preserve Indian forest lands, regardless of the language contained in S. 1289.

DETERMINATION OF APPROPRIATIONS

The Bureau of Indian Affairs has never been able to provide, on the Menominee Reservation, the level of funding needed to meet any significant portion of the forest management and environmental requirements contained in the law. Only recently has the Bureau attempted to quantify these needs by formula. The result was that BIA forestry appropriations, which were already far below the defined need, were distributed in a way which discriminated even more against the Menominee. In the long run, S. 1289 will only work and make a significant contribution, if the appropriations supporting it are adequate. Without adequate funding, the program will not fulfill its promise. We urge Congress to consider making the allocation statutory, and curing its inequities.

INDIAN SELF-DETERMINATION ACT - CONTRACTING TRUST SERVICES

The Menominee Indian Tribe has, since 1974, contracted under P.L. 93-638 with the Bureau of Indian Affairs to provide forestry services on the Reservation. Subsequently, the Bureau has applied an unwritten policy which places the Menominee under a "modified trust". But, the Menominee tribe has a specific trust management agreement with the United States under which the BIA is obligated to maintain its trust responsibility. Yet, because the Tribe contracts forestry services, i.e., all day-to-day management operations, the Tribe blames the Tribe for any management mistakes, while the Bureau believes it is relieved from any direct responsibility. The BIA no longer considers the Menominee forestry program as

under the Bureau's broad protection or management policies. We are told the Menominee forestry program is different and considered differently with respect to funding or technical support.

In practice, the Menominee forestry program is not recognized as part of the Minneapolis Area forestry program, and our professional forestry staff is often excluded from Bureau policy formulation, implemention or funding.

The Menominee Tribe believes that we (or any P.L. 93-638 tribe) should be considered peers or equals with our Bureau counterparts and essentially partners actively sharing in Area or Bureau-wide forest management concerns. We recommend that S. 1289 address the problems contracting tribes face in dealing with Bureau administrative structure and devise a method to include active tribal participation without prejudice against either tribal or Bureau staff.

STATEMENT OF

THE NATIONAL FOREST PRODUCTS ASSOCIATION

ON

S. 1289, THE NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT

SUBMITTED TO THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

October 19, 1989

The National Forest Products Association (NFPA) appreciates the opportunity to offer testimony before the Senate Select Committee on Indian Affairs concerning S. 1289 -- the National Indian Forest and Woodland Enhancement Act. NFPA is a national trade association representing forest land owners and forest products manufacturers. Our membership is composed of over 1,000 private companies, tree farmers, and Tribal timber enterprises throughout the United States. Additionally, a number of regional associations and allied groups, such as the Intertribal Timber Council, also support NFPA through their membership.

Because a large number of NFPA's members are dependent on timber harvesting from public forest lands, we appreciate the intricacies associated with the Federal government's attempts to help manage our nation's public natural resources. Our experience has shown, for example, that the Forest Service and Bureau of Land Management (BLM) have benefitted from the historic and statutory foundation upon which federal forest management activities are built. From their inception, both the Forest Service and the BLM have counted on federal statutes which delineate the purpose, nature, and scope of the federal forest reserves they manage.

The Forest Service has had a governing forest land management statute since 1897, when the Organic Administration Act was enacted. The BLM, also, has had direction from Congress regarding its forest land management goals with the enactment of the Oregon and California Railroad and Coosbay Wagon Road Grant Land Act in 1937. For this reason, NFPA is encouraged by the initiative of the sponsors of S. 1289, and commends the members of the Senate Select Committee on Indian Affairs for their interest in assuring that tribal forest lands be managed in a sound manner.

S. 1289 represents an important step in the Federal government's long-term commitment to good land stewardship of Tribal trust forest lands. Additionally, S. 1289 further enhances management cooperation between Native American Tribal governments and the Bureau of Indian Affairs (BIA) by outlining the Federal government's role and responsibility in the management of Native American forest lands.

Finally, S. 1289 is an important piece of legislation not only because it addresses the long-term future of Indian forested lands, but because it encourages the development of one of the most important Tribal resources -- its people. The establishment of the Indian Forestry Education Assistance Program, which encourages Native Americans to enter the field of forestry and forest management, is a crucial asset of this legislation.

The Intertribal Timber Council (ITC), an affiliation of sixty-two Native American tribes and Alaska native corporations who own millions of acres of forested lands, has presented today a detailed set of recommendations concerning S. 1289. NFPA supports the ITC's recommendations, and respectfully requests that the Committee give strong consideration to them. In addition, NFPA has two specific comments with regard to S. 1289.

DEFINITIONS

While we agree with S. 1289's intent to provide "[t]hat the management of Indian forest lands and woodlands and related renewable resources will be managed in a manner consistent with sustained yield principles and serve the needs of Indians and other citizens of the United States for the many products, benefits and services obtained from Indian forest lands[,]" we are concerned that no clear guidance is given in the legislation concerning the purpose of different forest land allocations.

For example, in Section 103, subsection (1), the bill defines commercial forest lands as "[I]ndian land that is forest land capable of bearing merchantable forest products, currently or prospectively accessible, and not withdrawn from such use[.]" (emphasis added). We interpret this definition to mean that commercial forest lands are those lands which are most desired for their capability of supplying timber products in a sustainable and environmentally sound manner, and which are identified as most productive under this use.

Nevertheless, in Section 201, Subsection (6), the Act addresses the preservation of commercial forest lands and woodlands. The provisions of this subsection would not allow timber harvesting activities in areas where other, non-timber values are identified as more desirable. Unfortunately, the Act continues to refer to these non-timber producing acres as commercial forest lands. Such classification is confusing, and in conflict with the above-mentioned definition of commercial forest lands outlined in Section 103, Subsection (1), where the economic and commercial activities associated with timber harvesting are the key elements used to describe this particular land allocation. In addition, this language is contrary to the purpose of the Act, which is to provide clarity as to the nature, purpose, and use of all the different types and portions of the Native American forest landscape.

Additionally, NFPA is concerned that the Act fails to outline the process(es) under which these types of land allocation decisions are being made. Although Section 201, Subsection (6) does state that the withdrawal of forest lands from commercial classification will be done at the request of an authorized Indian representative, nowhere in the Act do we find a reference to what stage in the land management decision-making

process such land allocation decisions should be made. Are non-commercial forest set-asides to be identified in the long-term forest resource management plan? Or are these non-timber production areas to be decided on a timber-sale-by-timber-sale basis after timber sale planning and lay-out have already occurred? For most effective planning, these decisions must be made openly and up front, in the long-term plan, not on an ad hoc post-planning basis.

Furthermore, NFPA requests that the Committee help clarify who constitutes an "authorized Indian representative." By not defining the term "authorized Indian representative," S. 1289 leaves a certain amount of ambiguity when it comes to explaining who has the ultimate land use allocation authority. Is it a Bureau of Indian Affairs field forester who happens to be a Native American, or is it the Tribal government? Notwithstanding the fact that resource planning decision-making processes exist to some degree in Tribal forest land planning, it would benefit the intent of the legislation to provide a clear definition of who constitutes an "authorized Indian representative". Such a definition is necessary to meet one of the purposes of S. 1289, which is to clarify the role and responsibilities of all those involved in the management of the Tribal forest lands.

The above two points are brought forth for the sake of clarity. When land management decisions are made affecting millions of acres and a multitude of valuable resources, it is essential that the elements under consideration -- be they resources, decision-making mechanisms, or implementation authority -- be presented in a clear and understandable manner.

FUNDING

Finally, we wish to urge the Committee to secure proper

funding of the Bureau of Indian Affairs forestry program. The Bureau of Indian Affairs forestry programs have continuously been underfunded by Congress. For example, in Fiscal Year FY 1989, the Bureau of Indian Affairs was appropriated approximately $32 million dollars to manage 5.6 million acres of commercial forest lands. This breaks down to approximately $5.71 spent managing each commercial forest acre. In contrast, the Forest Service, in the same fiscal year, spent $599.9 million managing 57.4 million acres, or approximately $10.44 per acre, a much closer reflection of current costs for public forest land management.

While NFPA appreciates that we live in a period of fiscal constraints and budgetary limits, we believe that such underfunding of the BIA's forestry program is inconsistent with the Federal government's commitment and responsibility to the Native Americans, and contrary to good land stewardship and forestry. The management and protection of all forest lands requires intensive participation and monetary commitment. NFPA believes that S. 1289 has the potential of providing the proper statutory directive and Congressional focus to help secure adequate funding for future Tribal forestry programs.

CONCLUSION

In conclusion, NFPA commends the sponsors of S. 1289 for their efforts to clarify the Federal government's management prerogatives, responsibilities, requirements, and commitments to Native American forest lands. We appreciate this opportunity to provide our comments on S. 1289. We would be happy to work with the Committee to further develop this bill and to provide any additional information that may be needed. Thank you.

Mr. Chairman, Distinguished Members of The Committee:

I am Robert Newell, Passamaquoddy Tribal Governor. The Passamaquoddy Indian Tribe appreciates this opportunity to offer comments on the forestry legislation addressed in Senate Bill 1289.

The Passamaquoddies in Maine were among those Native Americans who were first displaced from our lands by the arrival of people from other continents. We are among the last whose title to trust rights from the U.S. Government has been recognized. Among all Native Americans, we have gone the longest time without free and rightful access to the natural resources of land that once sustained our people. Parcels of land were restored to us only in this decade following our struggles in Court by the Indian Land Claims Settlement Act of 1980. You can understand that after so long a time without land rights, we place a high importance upon how well what we now have will be tended for future generations of our people. We feel that this legislation is vital in defining that future.

In the short time since we fought in the courts for proper recognition of our rights, our experience on our lands with current legislation makes it clear that there must be changes that will require greater care in managing the forest than has been the case in the past.

I will offer constructive comment.

1.) It is our view that Indian lands belong firstly to the Indian people, and that the trust responsibility of the U.S. Government requires that the means be provided to manage only in accord with the declared will of the people who own them. The alternative - that the U.S. Government should be able in any way to dictate the kind of use the lands shall receive - should be prohibited. The current legislation gives the Secretary of the Interior the right to manage our lands, but does not require that we be advised, nor consent, to that management, except that written Tribal objectives are provided for in the trivial case of establishment of a "product marketing program".

From 1984 to 1988, approximately 8,000 acres of our timber was logged with the approval of the Bureau of Indian Affairs. This logging went forward without constructing a forest management plan to inform our people what was intended - without their review and their consent in advance. Silvicultural standards were applied that have created an unproductive, clearcut forest where there was tall, growing timber that was self-seeding to high value species, and capable of sustaining a continuous yield. Logging was carried out without consideration of the injurious effects it has had on the future production of our forest. Another agency of the U.S. government had just spent approximately one million dollars to successfully protect the

timber from insect destruction - money that need not, and should not, have been spent, if it had been planned to log.

When the liquidation of our forest and the destruction of natural places that were treasured by many of our people became visible, the people expressed their views at our ballot box. Clearly, from those election results, which bring me before you, they would not have agreed to the management that took place had it been necessary to seek their consent in advance. Equally clearly, their position became known too late to preserve what was destroyed. I must agree that some of our own people in administrative positions concurred in what was done. Regardless, it never would have happened if there been a requirement for the Secretary to seek our informed consent by providing for the preparation of a forest management plan before the harvests, and having it ratified by us.

I would strongly urge that the opening paragraph of Section 201 in this bill be amended to require the Secretary to seek consent for any intended management from the owners of the forest land. There must be a mandated dialog between BIA staff and the Tribes, there must be clear joint responsibility, and joint agreement. There must be no opportunity for any BIA position to be imposed upon us, and a clear obligation for all BIA management to be reviewed and consented to by us, in advance.

2.) Secondly, we note that this legislation focusses on timber resources. It is made clear in the findings in the bill that forest land is an important source of "timber and wood products, fish and wildlife, subsistence uses, tourism, outdoor recreation, water, soil and air conservation, minerals, and cultural, religious, and traditional values": that is, forest land is a source of multiple natural resources. But in the body of the bill there is only an indirect indication in the form of one reference to "multiple-use forest and woodland management plans", for the need for all the natural resource values of forest land to be the object of planning and management, in a coordinated fashion. This Bill should be broadened to become a "National Indian Natural Resource Enhancement and Management Act" with full provision for planning and administration across all resources in an integrated fashion. We do not believe that forest land will be adequately or properly managed if the legislative guidance is so narrowly focussed on technical forestry, and management of the other natural resources is not also adequately integrated with timber production by legislative mandate. We recognize that it would take some time to properly construct a bill that would incorporate the technical aspects of managing the other resources in a fashion that is technically equivalent to the forestry material contained in this bill. Nevertheless, for example, it is equally important to our people that wildlife productivity be managed by protection and enhancement of habitats in the course of managing for timber. It would be a mistake to delay passage of the provis-

ions of this bill until a comprehensive bill could be constructed. We urge that this bill be formulated in such a way that it requires additions that cover the other natural resources produced on forest land, and mandates their integrated management.

3.) Thirdly, we feel strongly that it is vitally important to move our own people forward to perform our own management. There must be the best possible provisions for education, and for access to training positions in resource management agencies. We recognize the value of some of the those provisions in this Bill. We would comment however, that there may be too much emphasis placed upon the value of assignments of graduates following their education, to BIA or Tribal positions. One of the most important considerations in managing natural resources, is to gain an understanding of the particulars of local regions: an understanding of the proper silviculture for regional tree species; knowledge of the regional natural resource economies and business practices; and regional climatic and environmental considerations that govern the reproduction and growth of local species. If there must be a provision for employment in a public agency, and we do not see why there must be, there should be the broadest possible provision in the bill for post-graduation employment with other local, state and federal natural resource agencies, such as the U.S. and State Forest Services, and Universities. Our two Passamaquoddy Tribal foresters have gained

significant experience with the U. S. Forest Service, for example. It is fair to say that most BIA positions are located in western forests. It is important to guard against management of lands by those whose experience was gained elsewhere, and who may innocently, but mistakenly, apply foreign prescriptions that produce harm when dealing with our forests. We have had those things happen on our lands with the sincere and well-meaning attention of Bureau staff whose experience was gained elsewhere.

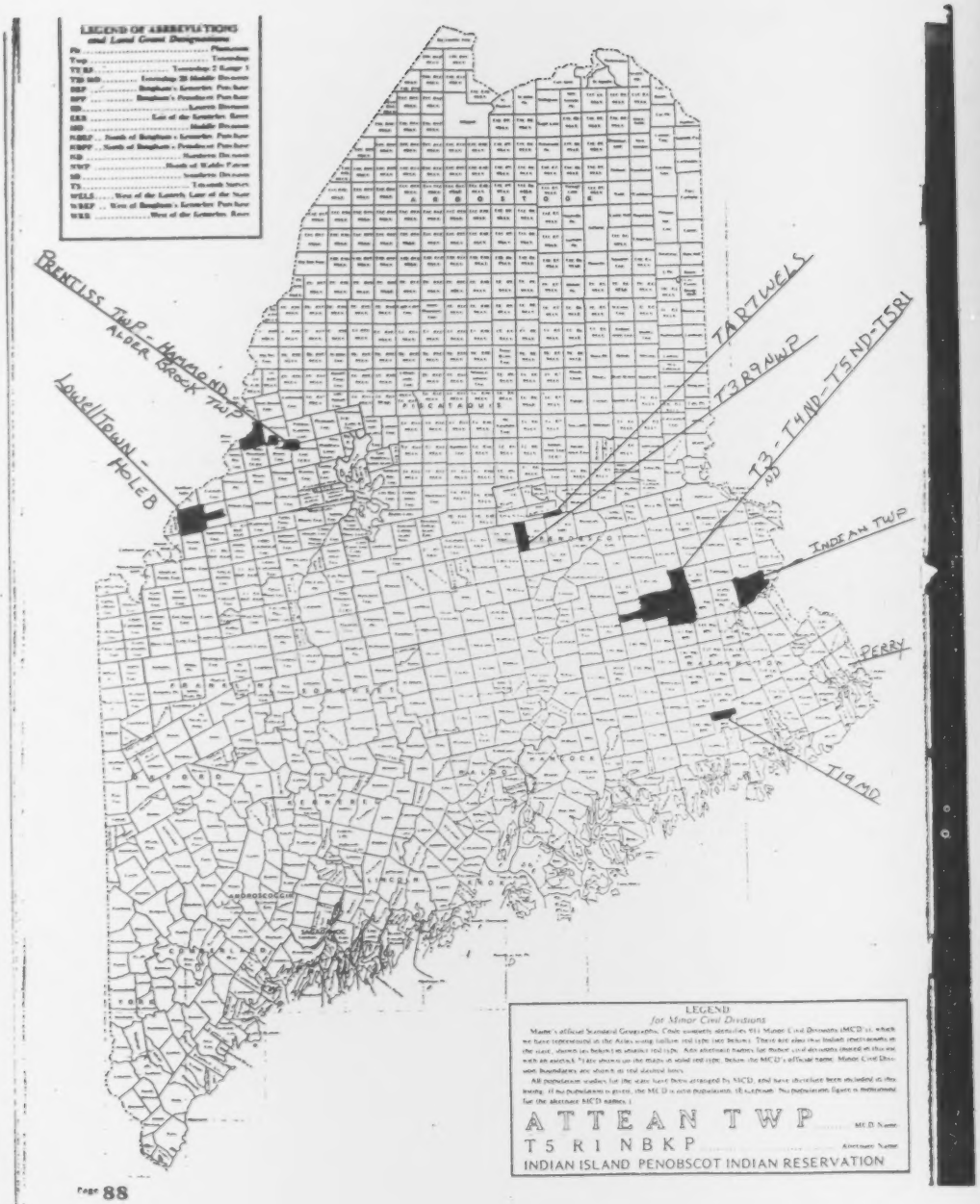
Our people have a deep and quick intelligence. It can be harnessed and directed with a thorough and capable educational program. There is no better way to provide continuity of accumulated knowledge and wisdom - the most precious ingredient in good land stewardship and high quality management of a natural ecosystem - than to sow the seeds of education where they will most likely produce generations that will follow on the same lands. The strongest possible provisions must be made for the education of our own people.

4.) Fourthly, it must be mandated that adequate allottments be made both for management and for restoration of the productivity of our lands. Our present budgets provide for a quality of management that is among the lowest in the State of Maine. By ordinary standards among non-industrial owners in our region, for the acreages we own, ordinary management costs would be over a

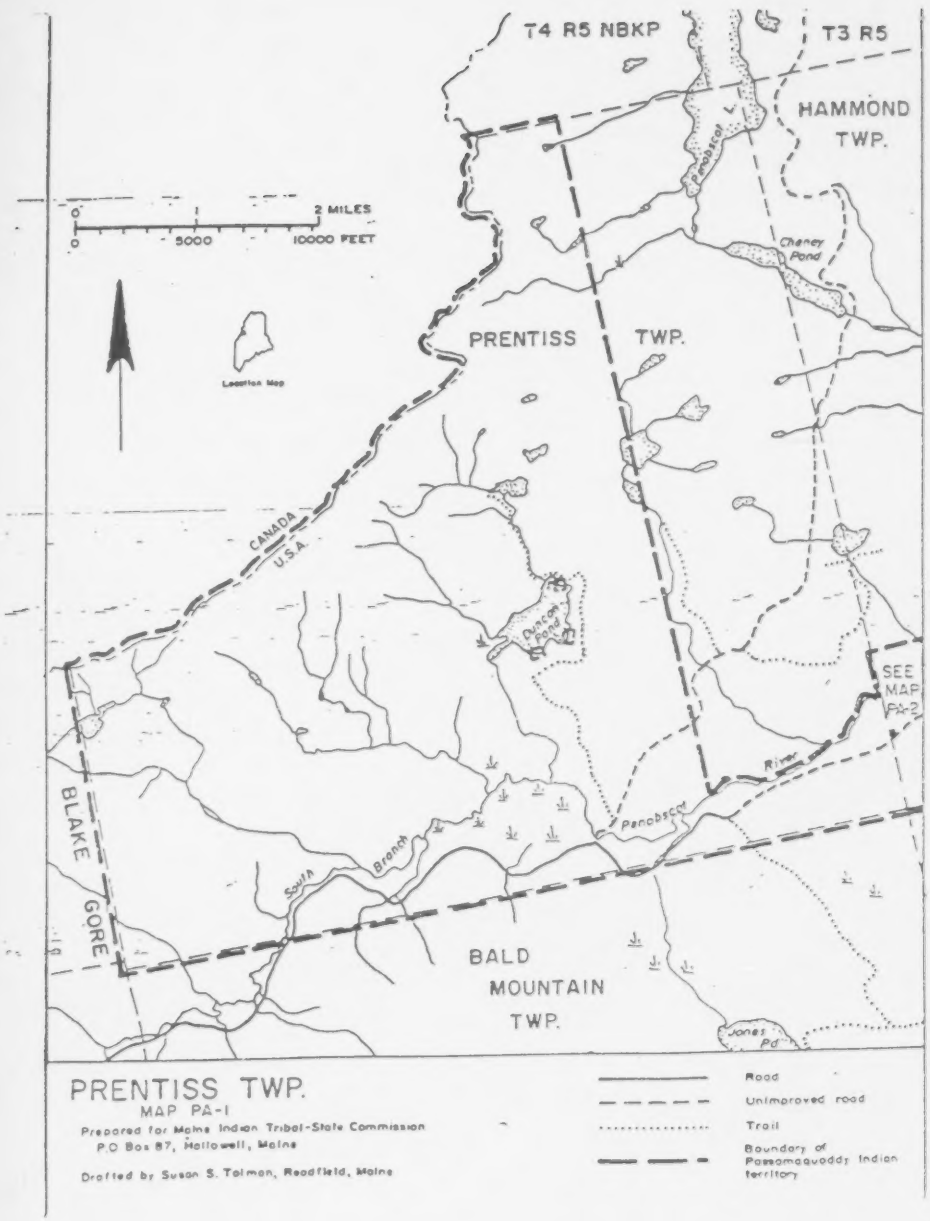
half million dollars. Our annual budget is about half of what is required. Management should also include the restoration to productive condition of forest land that has been left unproductive in previous harvests. Fully two-thirds, and probably more, of the land harvested under Bureau jurisdiction since we acquired it, is now stocked with low value "weed" species and needs planting and crop-tree release treatments. Continuing allotments for timber stand rehabilitation must be formally provided for in some suitable way in legislation, and belong properly in this bill. The future productivity of our forest land depends vitally upon how well the new stands of timber are established - quality and high value cannot be produced from a bad beginning.

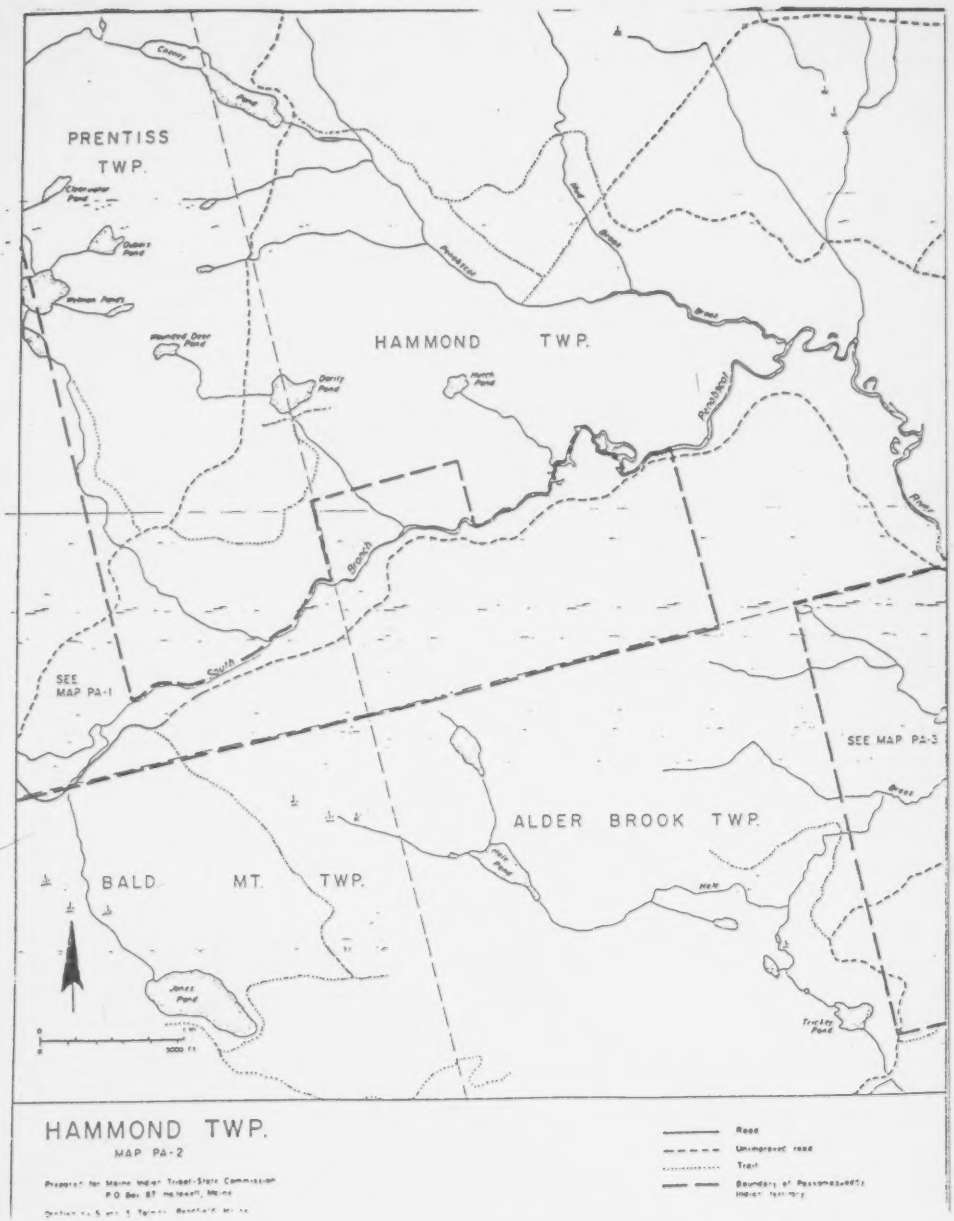
In conclusion, we endorse the need for legislation of this kind. We urge that it be very clear about the joint responsibility and obligation of the U. S. Government to the owners of the land; that it recognises that forest management is the management of diverse, equally important resources and is wise in allowing for their inclusion; that it provides effective mechanisms for our own people to manage our resources; and that sufficient means be provided to carry out it's objectives.

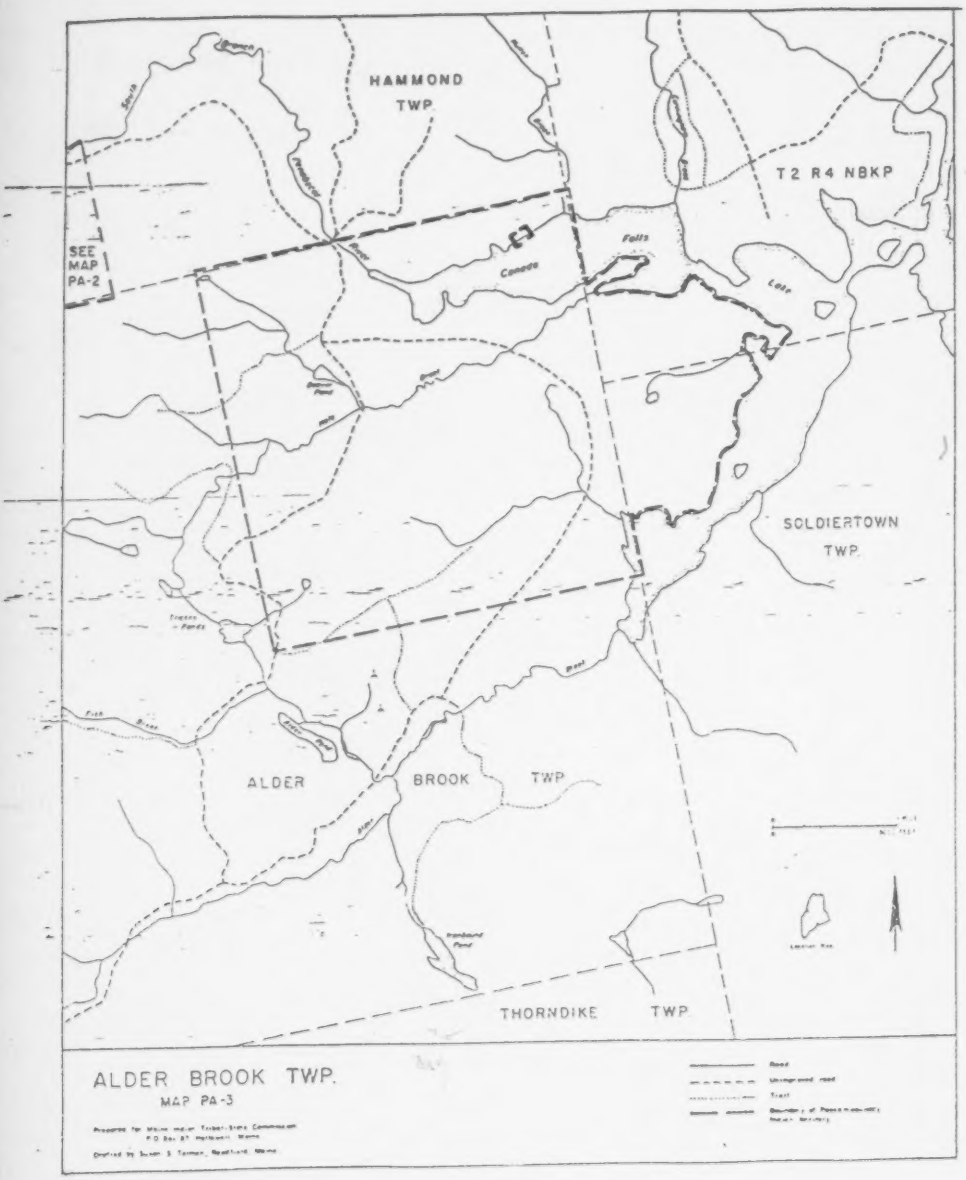
We would be pleased to offer our assistance in any way that would be helpful in developing the legislation further. Thank you for this opportunity to appear before you.

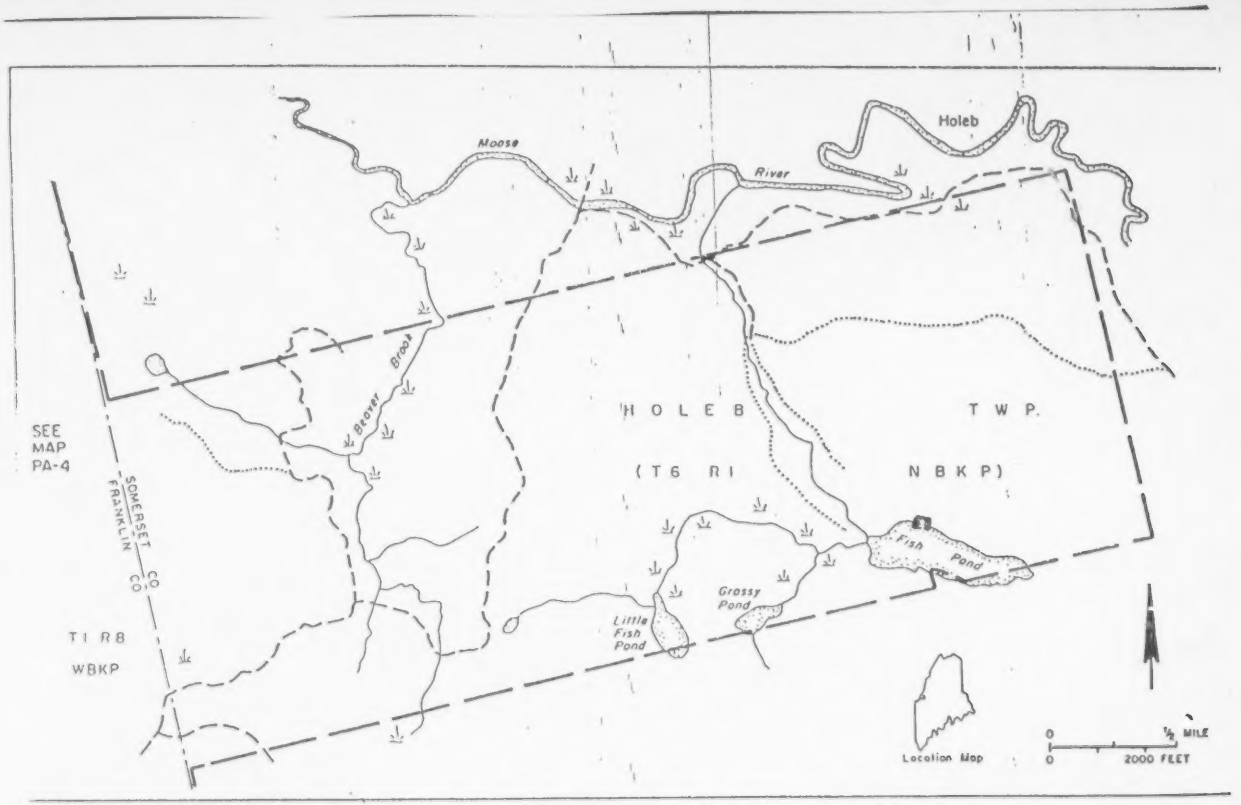

LEGEND OF ABBREVIATIONS and Land Grant Designations
Plt ..... Plantation
Twp ..... Township
TT RR ..... Township 2 Range 1
TTM MD ..... Township 3 Middle Division
BBP ..... Bingham's Kennebec Purchase
BPP ..... Bingham's Penobscot Purchase
BD ..... Lincoln Division
ELR ..... East of the Kennebec River
MD ..... Middle Division
RBKP .. North of Bingham's Kennebec Purchase
RBPP .. North of Bingham's Penobscot Purchase
ND ..... Northern Division
WWP ..... North of Waldo Patent
SD ..... Southern Division
TS ..... Tolcotnik Station
WELS ..... West of the Easterly Line of the State
WBKP .. West of Bingham's Kennebec Purchase
WKR ..... West of the Kennebec River
BERWICK TWP - HOLEB
ALDER BROOK TWP
LOWELL TOWN - HOLEB
T3 R8 WELS
T3 - T4 ND - T5 ND - T5 R1
INDIAN TWP
PERRY
T19 MD
PISCATAQUIS
FRANKLIN
SOMERSET
PENOBSCOT
KENNEBEC
WALDO
LINCOLN
ANDROSCOGGIN
CUMBERLAND
YORK
LEGEND
for Minor Civil Divisions
ATTEAN TWP ..... M.C.D. Name
T5 R1 NBKP ..... Alternate Name
INDIAN ISLAND PENOBSCOT INDIAN RESERVATION

Page 88


T4 R5 NBKP
T3 R5
HAMMOND TWP.
Penobscot
Cheney Pond
PRENTISS TWP.
0 1 2 MILES
0 5000 10000 FEET
Location Map
CANADA U.S.A.
Duncan Pond
SEE MAP PA-2
Penobscot River
South Branch
BLAKE GORE
BALD MOUNTAIN TWP.
Jones Pd
PRENTISS TWP.
MAP PA-1
Prepared for Maine Indian Tribal-State Commission
P.O Box 87, Hallowell, Maine
Drafted by Susan S. Tolman, Readfield, Maine
Road
Unimproved road
Trail
Boundary of Passamaquoddy Indian territory


PRENTISS
TWP.
HAMMOND TWP.
SEE
MAP PA-1
SEE MAP PA-3
ALDER BROOK TWP.
BALD MT. TWP.
HAMMOND TWP.
MAP PA-2
Roads
Unimproved road
Trail
Boundary of Passamaquoddy
Indian Territory


HAMMOND
TWP.
T2 R4 NBKP
SEE
MAP
PA-2
Falls
Canada
Lake
SOLDIERTOWN
TWP.
ALDER
BROOK
TWP.
THORNDIKE
TWP.
ALDER BROOK TWP.
MAP PA-3

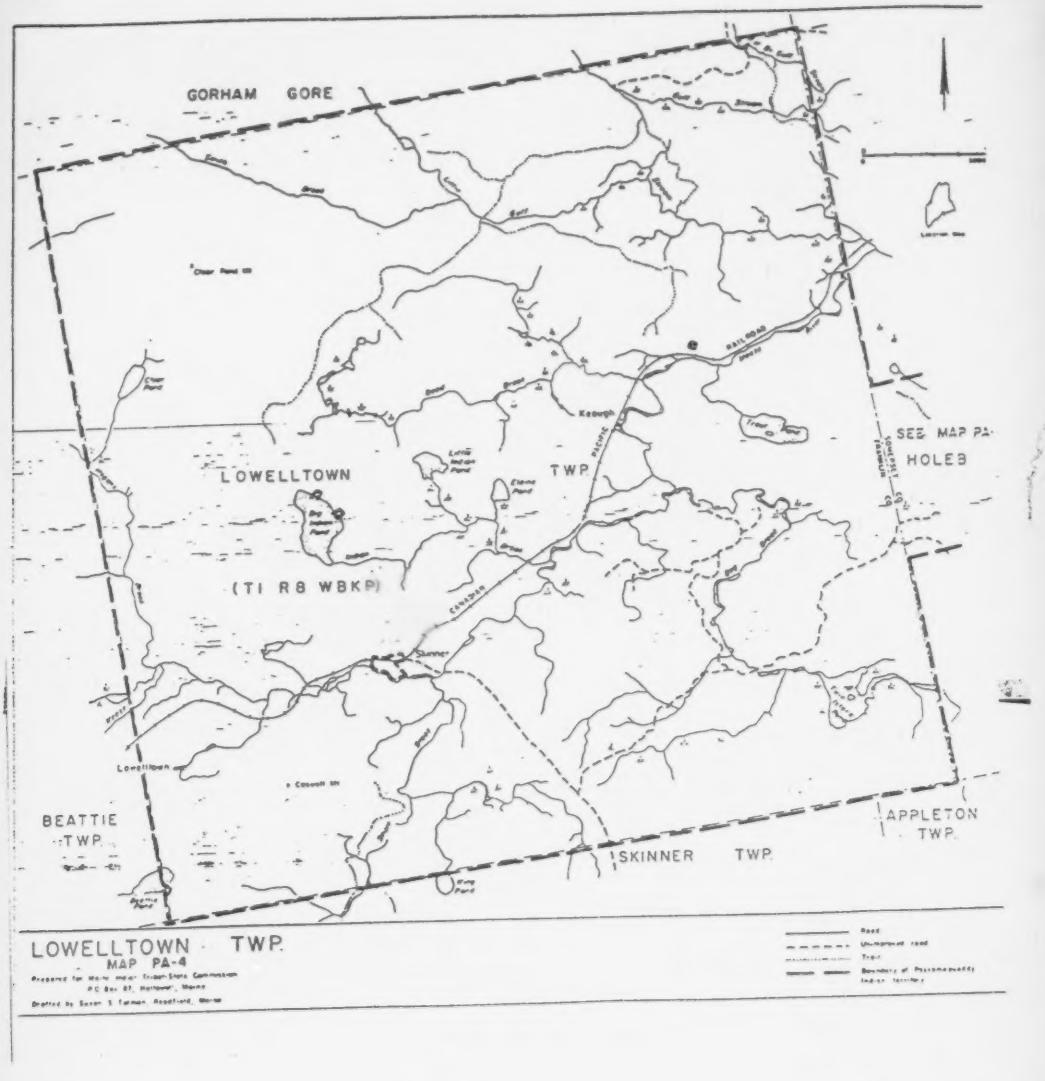


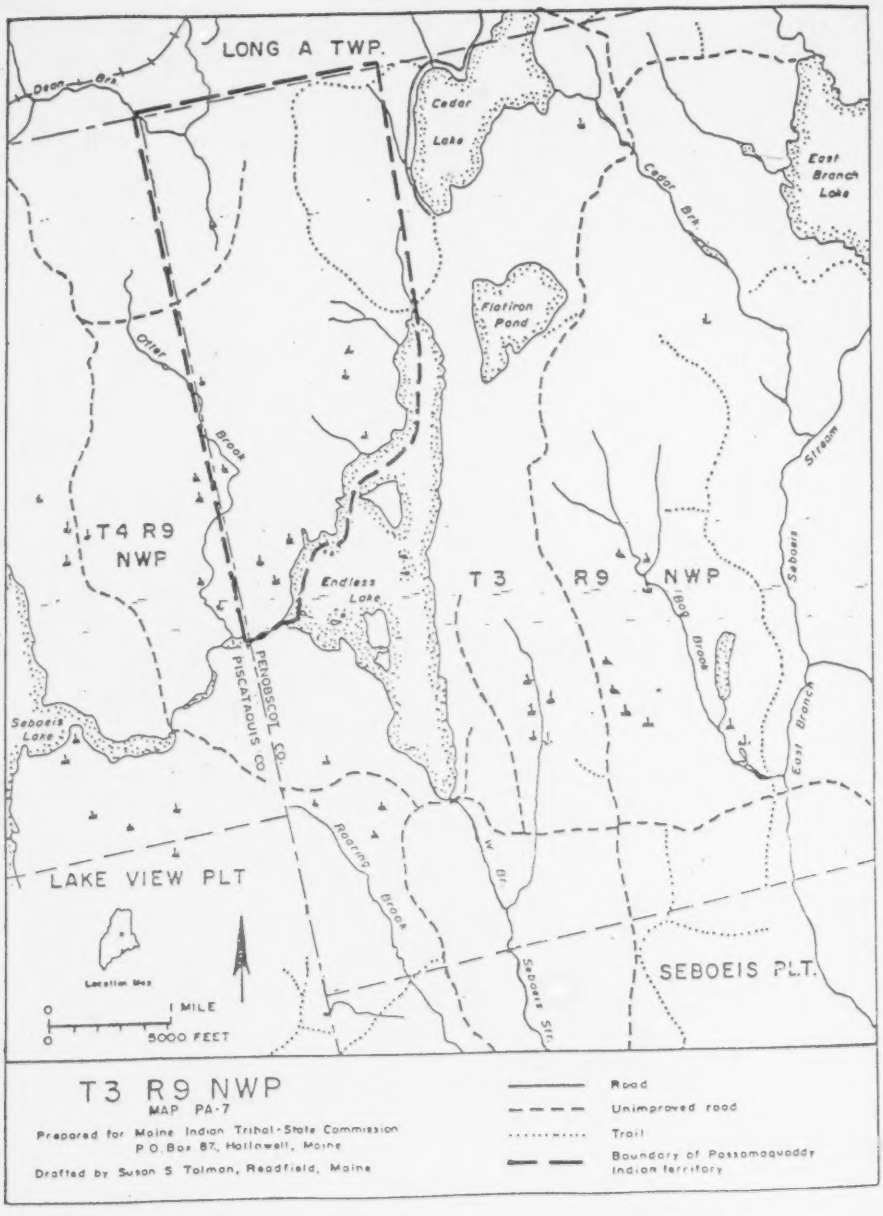
HOLEB TWP.

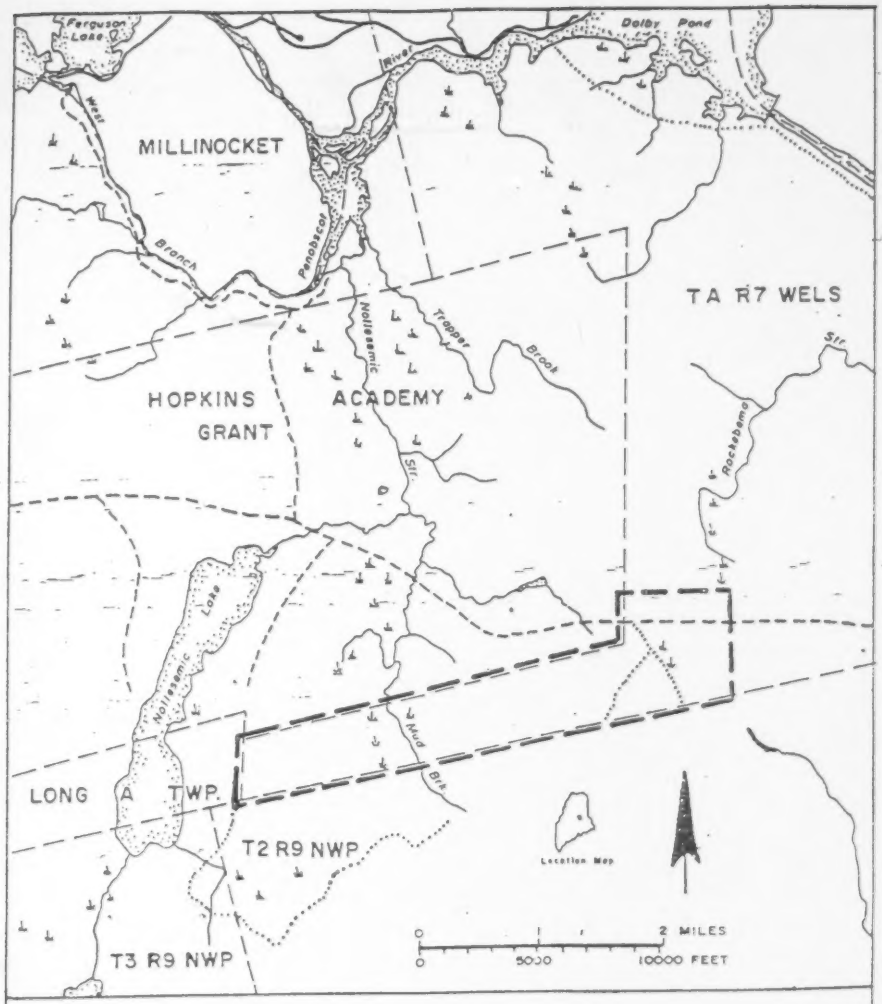
MAP PA-5

Prepared for Maine Indian Tribal-State Commission
P O Box 87, Hallowell, Maine
Drafted by Susan S. Tolman, Readfield, Maine

Road
Unimproved road
Trail
Boundary of Passamaquoddy Indian territory


GORHAM GORE
LOWELLTOWN TWP.
(T1 R8 WBKP)
SEE MAP PA-
HOLEB
BEATTIE TWP.
SKINNER TWP.
APPLETON TWP.
LOWELLTOWN TWP.
MAP PA-4


LONG A TWP.
Dean Brk
Cedar Lake
East Branch Lake
Cedar Brk
Flatiron Pond
Otter Brook
T4 R9 NWP
Endless Lake
T 3 R9 NWP
Seboeis Stream
Beck Brook
East Branch
PENOBSCOT CO.
PISCATAQUIS CO.
Seboeis Lake
Roaring Brook
W Br
LAKE VIEW PLT
SEBOEIS PLT.
Location Map
1 MILE
5000 FEET
T3 R9 NWP
MAP PA-7
Prepared for Maine Indian Tribal-State Commission
P.O. Box 87, Hallowell, Maine
Drafted by Susan S. Tolman, Readfield, Maine
Road
Unimproved road
Trail
Boundary of Passamaquoddy Indian territory



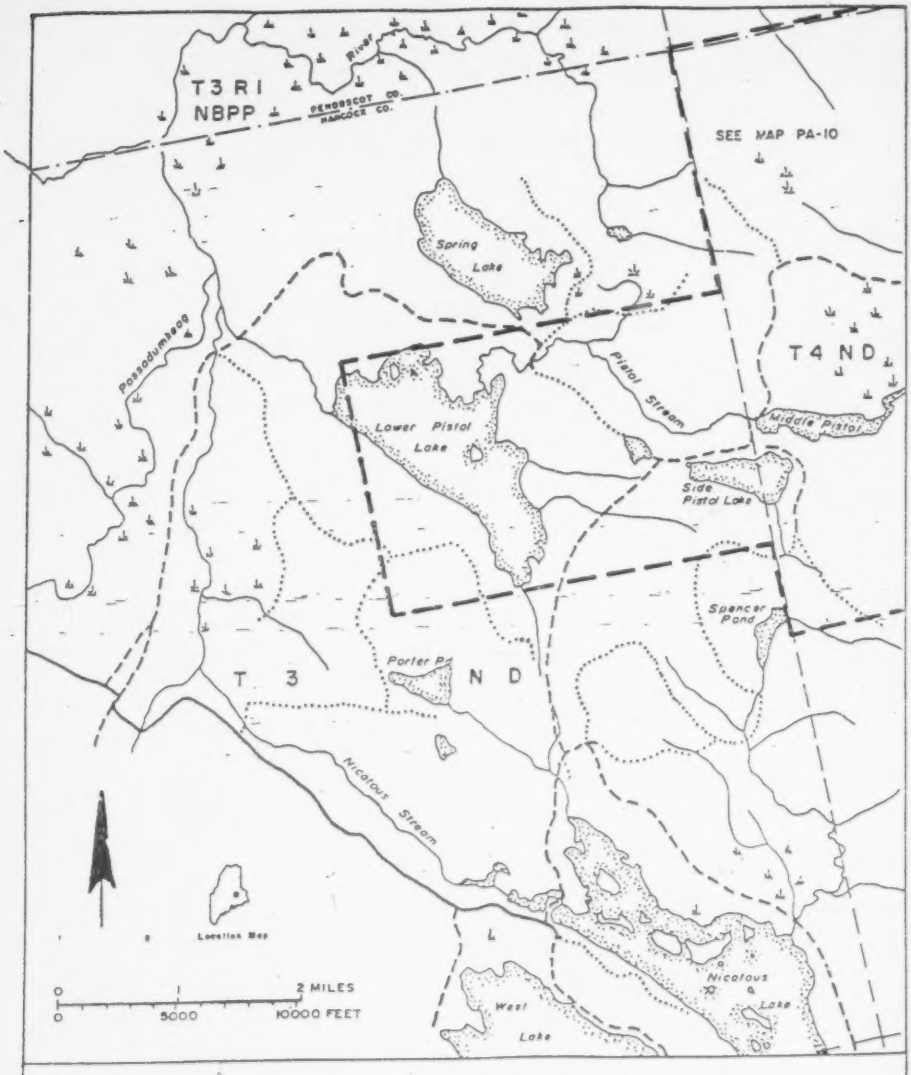
TA R7 WELS

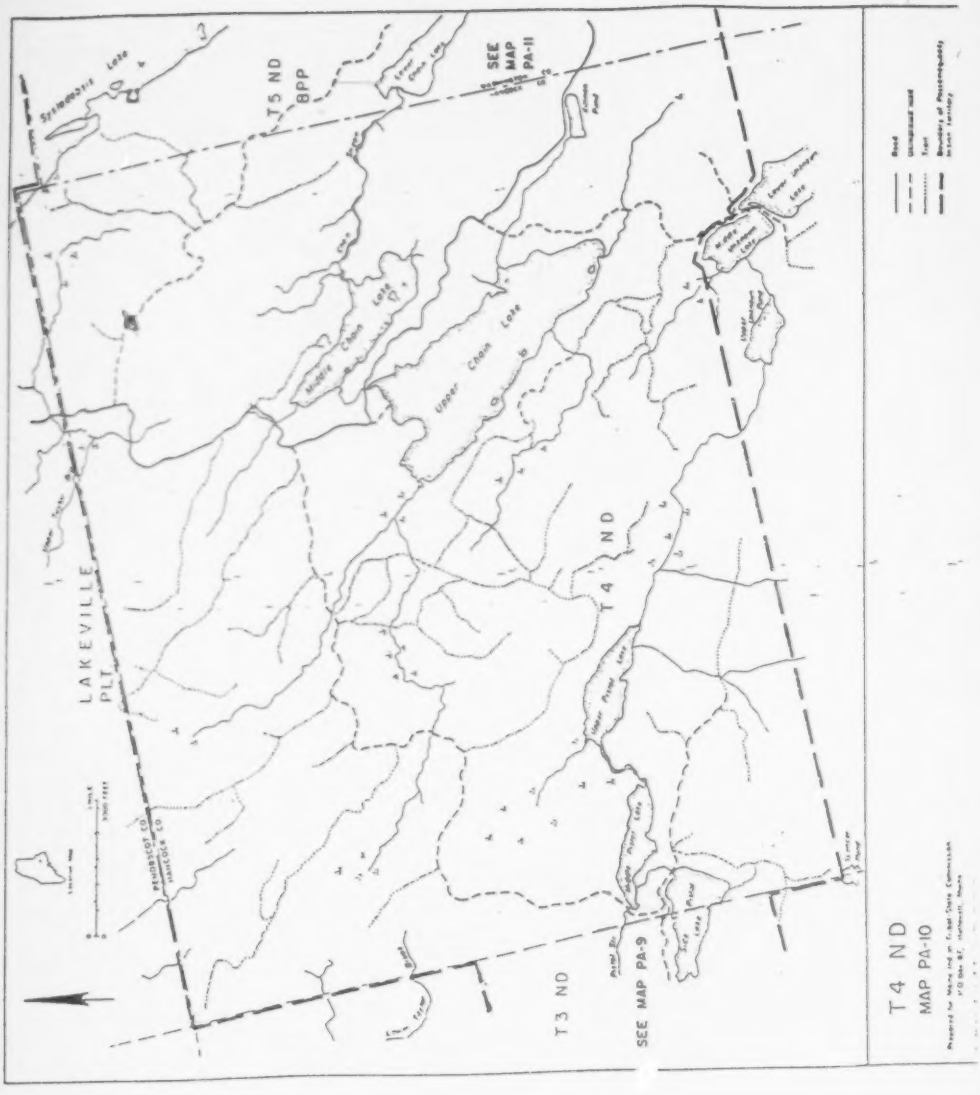
MAP PA-6

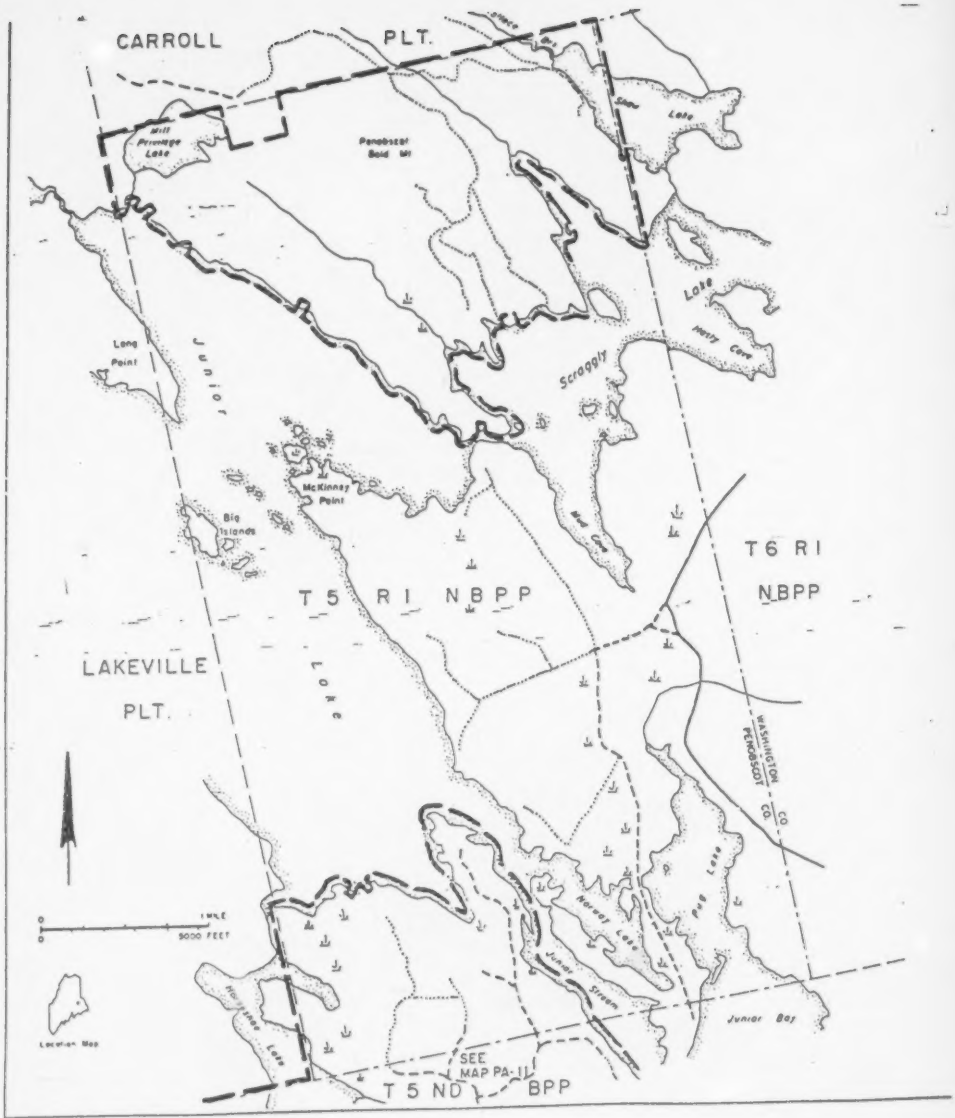
Prepared for Maine Indian Tribal-State Commission
P.O. Box 87, Hallowell, Maine

Drafted by Susan S. Tolman, Readfield, Maine

Road
Unimproved road
Trail
Boundary of Passamaquoddy Indian territory


T3 RI
NBPP
PENOBSCOT CO.
PISCATAQUIS CO.
SEE MAP PA-10
Spring Lake
Passadumkeag
Pistol Stream
T4 ND
Lower Pistol Lake
Middle Pistol
Side Pistol Lake
Spencer Pond
Porter Pd
T 3 N D
Nicatous Stream
Location Map
2 MILES
5000
10000 FEET
Nicatous Lake
West Lake
T3 ND
MAP PA-9
Prepared for Maine Indian Tribal-State Commission
P.O. Box 87, Hallowell, Maine
Drafted by Susan S. Tolman, Readfield, Maine
Road
Unimproved road
Trail
Boundary of Passamaquoddy Indian territory

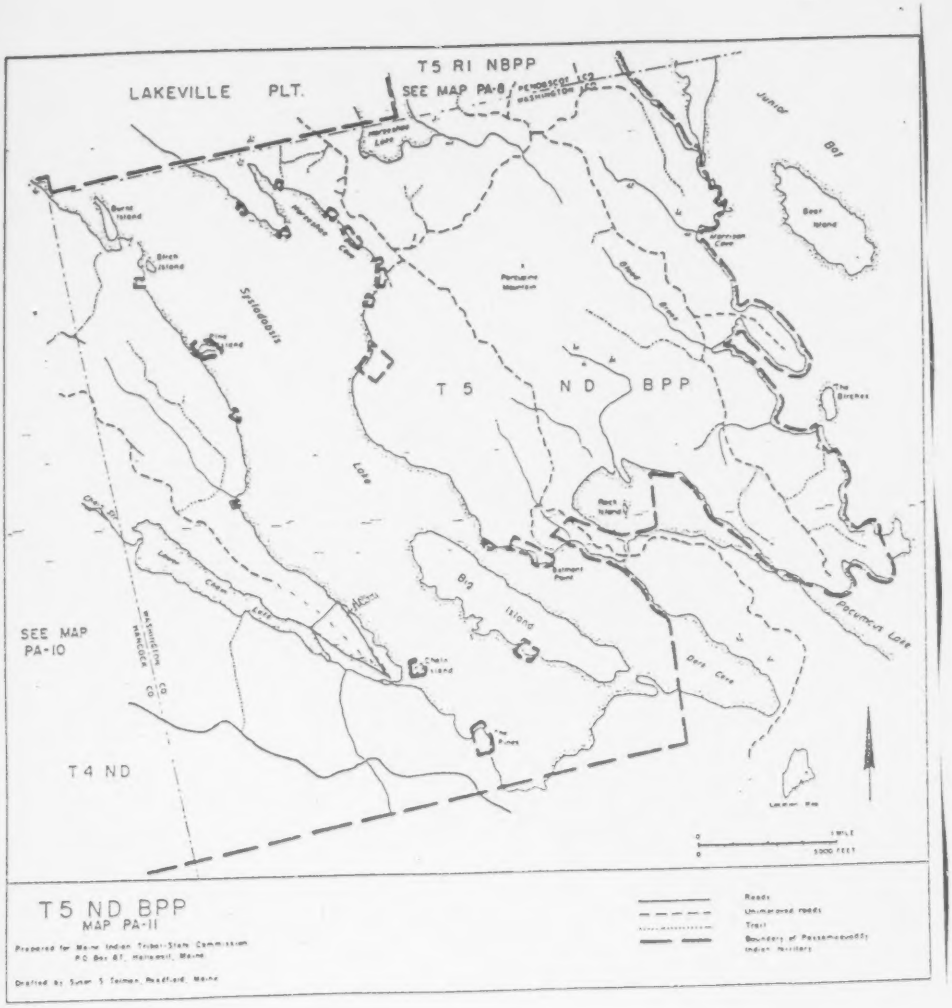

T5 ND
BPP
SEE MAP PA-11
Upper Chain Lake
T4 ND
LAKEVILLE PLT
T3 ND
SEE MAP PA-9
T4 ND
MAP PA-10

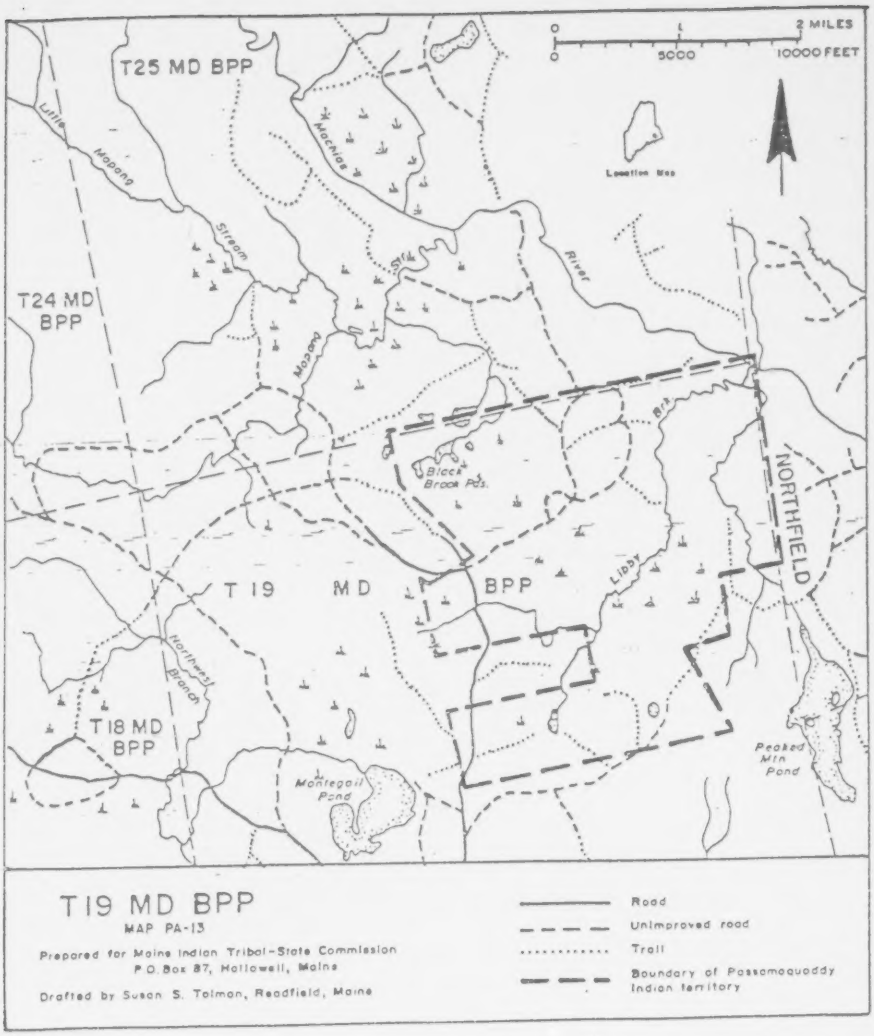


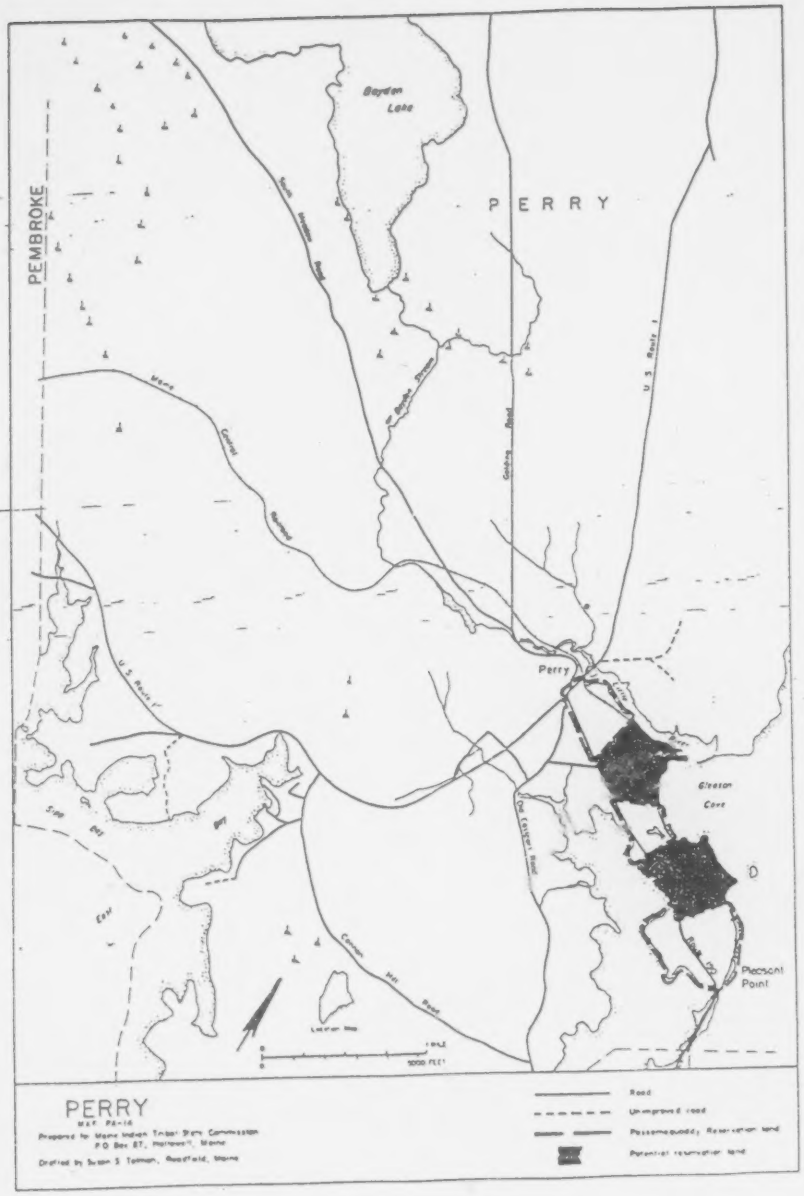
T5 R I NBPP

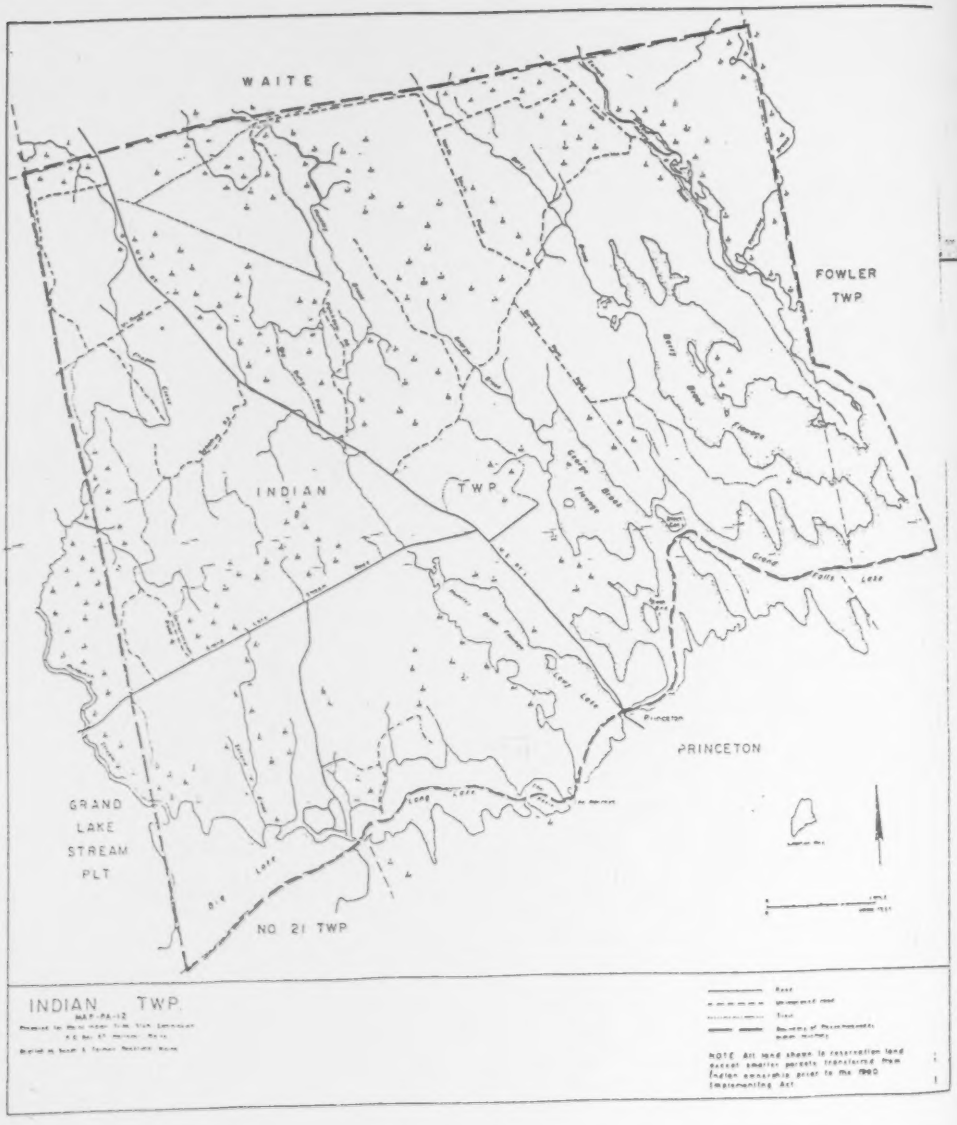
MAP PA-8

Prepared for Maine Indian Tribal-State Commission
P O Box 87, Hallowell, Maine


LAKEVILLE PLT.
T5 R1 NBPP
SEE MAP PA-8
PENOBSCOT 1.C.R.
WASHINGTON 1.R.C.
Junior Bay
Boot Island
Harrison Cove
Burnt Island
Bluff Island
Spectacle Pond
Portage Mountain
Bluff Brook
T 5 ND BPP
The Brothers
Lake
Point Sunday
Belmont Point
Big Island
Procupine Lake
Lower Cove
Cove
Chair Island
Deer Cove
SEE MAP PA-10
WASHINGTON HANCOCK CO.
T4 ND
Lukeman Rks
0 1 MILE
0 5000 FEET
T5 ND BPP
MAP PA-11
Prepared for Maine Indian Tribal-State Commission
P.O. Box 87, Hallowell, Maine
Drafted by Susan S. Tolman, Readfield, Maine
Roads
Unimproved roads
Trail
Boundary of Passamaquoddy Indian Territory


T25 MD BPP
T24 MD BPP
T 19 MD BPP
T18 MD BPP
NORTHFIELD
Little Mopang Stream
Machias
Mopang
Mopang River
Bog
Bicce Brook Pds.
Libby
Northeast Branch
Montegail Pond
Peaked Mtn Pond
Location Map
0 1 2 MILES
0 5000 10000 FEET
T19 MD BPP
MAP PA-13
Prepared for Maine Indian Tribal-State Commission
P.O. Box 87, Hallowell, Maine
Drafted by Susan S. Tolman, Readfield, Maine
Road
Unimproved road
Trail
Boundary of Passamaquoddy Indian territory


PEMBROKE
PERRY
Boyden Lake
South Meadow Road
Gedney Road
U.S. Route 1
Maine Central Railroad
Perry
Gleason Cove
Pleasant Point
Common Road
Cove Landing Road
Indian Island
PERRY
WAT. PA-16
Prepared for Maine Indian Tribal-State Commission
P.O. Box 87, Hallowell, Maine
Drafted by Susan J. Tolman, Readfield, Maine
Road
Unimproved road
Passamaquoddy Reservation land
Potential reservation land


WAITE
FOWLER TWP
INDIAN TWP
PRINCETON
GRAND LAKE STREAM PLT
NO. 21 TWP
INDIAN TWP
NOTE: All land shown is reservation land except smaller parcels transferred from Indian ownership prior to the 1980 Implementing Act

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
EASTERN AREA OFFICE
1951 Constitution Avenue NW.
Washington, D.C. 20245

IN REPLY REFER TO:
Trust Services

22 JUL 1986

Cliv Dore, Tribal Governor
Passamaquoddy Tribe
Pleasant Point
Attention: Forestry
P.O. Box 343
Perry, Maine 04667

Dear Governor Dore:

Assistant Director of Forestry of the Joint Forestry Commission Al Steele has advised that a logging contractor near Jackman, Maine has expressed an interest in clear-cutting 700 acres of the Tribe's Lowelltown lands. Forest stocking data indicates an economical cutting operation would require the removal of all merchantable material. There is no indication that this operation is needed to salvage material that would otherwise be lost to the Tribe. Mr. Steele has requested advice regarding this proposed cut.

Without justification we can not approve additional clear-cuts on the Passamaquoddy lands. We are required by the Code of Federal Regulations to manage Indian lands to produce a sustained yield of forest products. Because of extensive operations to salvage material damaged by the spruce budworm, large areas of tribal land have been virtually clear-cut; thus, drastically reducing timber growing stock. This will cause a decline in material available for future regulated cuts and consequentially, a decline in future income to the tribe. Any additional clear-cutting will cause additional problems in maintaining a sustained yield.

Concurrently, tribal members have expressed concern regarding the aesthetics of the clear-cut salvage operations. This proposed cut has the potential to further degrade reservation aesthetics and cause additional controversy.

We strongly recommend that all future cutting operations be limited to managed cuts designed to increase stocking and achieve the optimum sustained harvest of forest products. We are not opposed to clear-cuts as a salvage or silvicultural tool but they must be justified as such.

B. D. Ott
Area Director
Eastern Area Office

Governor
Robert Newell
Lt. Governor
Jeannette Neptune
State Representative
Joseph Nicholas

Indian Township
Tribal Government

Council Members
Albert Dana
Basil LaCoote
Darrell Newell
Darryl Nicholas
Phyllis Saunders
Simon Sockabasin

Box 301, Princeton, Maine 04668, Tel. (207) 796-2301

November 12, 1986

Mr. Bill Ott
Director, Eastern Area Office
BIA- Dept. of the Interior
MS 711-Broyhill
1951 Constitution Ave., N.W.
Washington, D.C. 20245

Re: Forest Development

Dear Mr. Ott:

According to CFR 25, Section 163.25, forest development is a segment of the forestry program which addresses the improvement of timber resources.

I want to initiate the forestry development segment into the existing Tribal Forestry Program. Please advise me as to the appropriate procedures in applying for the forest development program funding.

Sincerely,

Robert Newell
Tribal Governor

RN/sl
cc: Tribal Planning
Tureen & Margolin
Jennifer Wriggins
Raphael Sockabasin

RECEIVED NOV 14 1986

EXHIBIT A

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
EASTERN AREA OFFICE
1951 Constitution Avenue NW.
Washington, D.C. 20245

IN REPLY REFER TO:
Trust Services

08 DEC 1986

Robert Newell, Tribal Governer
Passamaquoddy-Indian Township
Attention: Forestry
P. O. Box 301
Princeton, Maine 04668

Dear Governor Newell:

This is in response to your letter of November 12, 1986, that requested advise on the procedures used to apply for forest development add-on funds. The current Bureau of Indian Affairs (BIA) forest development program was initiated in FY-77 with the intent to eliminate the entire backlog of forest development projects within ten years. Since the expiration of the original authorization, Congress has authorized funds for an extension of the program.

In his memorandum of July 20, 1979 (attached), Acting Deputy Commissioner Seneca advised that no forest development projects that were not included in the original justification would be considered for funding with these add-on funds. He also advised that forest development projects that accrue after FY-77 must be funded with either administrative fees, program funds, or through timber sale requirements.

The Passamaquoddy lands were acquired in trust after FY-77. Because of the Acting Deputy Commissioner's decision, your forest development needs can not be funded with forest development add-on funds. If the justification for limiting the use of these funds to lands in trust in FY-77 is reevaluated and this limitation is eliminated, we will be eager to assist in securing funding for your forest development projects through this account.

B. D. Ott
Area Director
Eastern Area Office

Enclosure

RECEIVED
DEC 11 1986

Copy to: Bruce & Raphael

EXHIBIT B

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 20 1979

Rec'd. Forwarded 10-3-79

Memorandum

To: All Area Directors
(except Muskogee & Anadarko)

From: Acting Deputy Commissioner

Subject: Forest Development Backlog and Accomplishments

We are constantly being reminded by the House Appropriations Subcommittee that they are maintaining a close watch on our progress in eliminating forest development backlogs. We have recently been requested to submit to the Congress a proposed accomplishment schedule for the ten-year program initiated in FY 1977 showing how we plan to eliminate the entire backlog, including accruals through FY 1978. In addition to the original ten-year program period, the requested accomplishment schedule was to include the possibility of a continuation of funding for an additional three-year period.

In order to meet this request the attached Table I was provided to the Subcommittee. We have further broken down this table to provide each Area a target number of acres of both reforestation and timber stand improvement which must be met in order to complete the task of eliminating the present backlog.

Table II, which is attached, shows by Area and fiscal year the acreage on which forest development projects must be accomplished to comply with the intent of the Congress when add-on funding was provided in FY 1977 to initiate the ten-year forest development program.

Based on the backlog and accomplishment information which you have provided to this office and the schedule of projected elimination of those backlogs submitted to the Congress, we have prepared an adjustment in the proposed allocation of the forest development add-on funds for FY 80, FY 81 and FY 82 as follows:

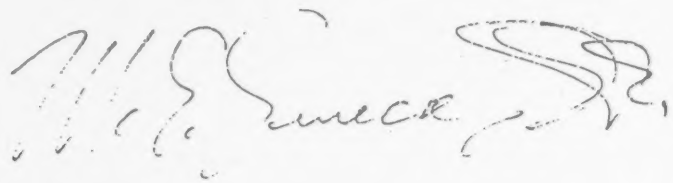
	Actual Allocation	Proposed Allocations		
Area	FY 1979	FY 80	FY 81	FY 82
Aberdeen	$105,000	$147.4	$143.1	$148.5
Albuquerque	543,000	844.6	1,053.2	1,290.5
Billings	661,000	462.4	495.1	456.2
Eastern	50,000	75.1	68.8	59.8
Juneau	42,000	8.4	9.4	11.1
Minneapolis	330,000	418.7	418.2	365.8
Navajo	367,000	427.2	355.9	355.5
Phoenix	357,000	572.3	572.9	529.4
Portland	1,950,000 1/	1,408.2	1,269.9	1,180.8
Sacramento	90,000	135.7	113.5	102.4

1/ Includes 400,000 for Quinault Contract

In computing the proposed allocations in the above table an average T.S.I. cost of $65 per acre was used based on 1978 Forest Development Projects Accomplishment Reports for all Areas. For most Areas a cost of $170 per acre was used for reforestation. Juneau was allowed $180 per acre based on the higher salary costs in that Area, while Aberdeen, Minneapolis and Eastern Areas were allowed $150, and $120 per acre as shown on the 1978 reports. The resulting totals were then proportionately reduced to equal the $4,500,000 actually available for allocation. Also attached for your information as Table III is the actual allocation by Area for FY 77 and FY 78.

These proposed allocations are subject to change. Any Area which has difficulty in using these funds for the purpose of reducing existing backlog should notify this office immediately, preferably prior to April 1 each year. This will allow us time to reallocate the funds to an Area where they can be effectively used. Each Area should attempt to meet the acreage requirements as set forth in Table II. If the accomplishment goals cannot be met, a detailed explanation should be submitted with the first Forest Development Projects Planning Report requested after it becomes evident that the proposed goals cannot be met. This explanation should state the specific reasons for not being able to meet the proposed goals such as; lack of personnel, lack of planting stock, insufficient funds, etc. If they can be surpassed it will alleviate greater pressure on the dollars during the last eight years of the program.

It must also be understood that the Congress does not expect any additional forest development backlog to accrue on lands presently held in trust by the Bureau. Elimination of new accruals, which have occurred since inception of the ten-year program in FY 1977, must be provided for through the use of other funds such as administrative fees, regular forestry program funds, or included as a requirement of timber sale contracts.



Attachments

TUREEN & MARGOLIN
178 MIDDLE STREET
P. O. BOX 528 DTS
PORTLAND, MAINE 04112
207/773-7166

THOMAS N. TUREEN
BARRY A. MARGOLIN

ROBERT L. GIPS
BETTS J. GORSKY
JENNIFER WRIGGINS
JAMES B. WEBER*

March 24, 1987

The Honorable Robert Newell
Governor, Passamaquoddy Reservation
Indian Township
Princeton, Maine 04668

The Honorable Melvin Francis
Governor, Passamaquoddy Reservation
Pleasant Point
Perry, Maine 04667

The Honorable James Sappier
Governor, Penobscot Nation
Community Building
Indian Island, Maine 04468

Re: Forest Development Funding; Bureau of Indian Affairs

Dear Bobby, Melvin, and Jim:

I have been working on the issue of forest development funding with Bruce Francis of the Passamaquoddy Forestry Department and John Banks of the Penobscot Nation Department of Natural Resources. I have also discussed the issue with James Howe, the Chief Forester of the Bureau of Indian Affairs' Eastern Area Office, and with George Waters. The general agreement which has come out of these discussions is that it may be beneficial for the Passamaquoddy and Penobscot Governors to write to Ross Swimmer at the Bureau's Central Office in an attempt to get him to change the Bureau's position that the Passamaquoddy Tribe and the Penobscot Nation are not eligible for forest development funding.

Accordingly, after conversations with John and Bruce, I have drafted a letter to Ross Swimmer stating arguments why forest development funding should be provided to the Tribes. Enclosed is a copy of this draft for your review. I am also sending a copy of this draft to John and Bruce for their technical review. Please let me know whether the letter meets

*ADMITTED TO WASHINGTON STATE BAR ONLY

your approval, or whether changes need to be made. Thank you very much for your assistance.

Please call me if you have any questions.

Sincerely yours,

Jennifer Wriggins

JW:ajm
Enc.

cc: Mr. Bruce Francis
Mr. John Banks

Melvin Francis, Governor
Pleasant Point Passamaquoddy Reservation
Perry, Maine 04 67

Robert Newell, Governor
Indian Township Passamaquoddy Reservation
Princeton, Maine 04668

James Sappier, Governor
Penobscot Nation
Old Town, Maine 04468

March 24, 1987

Mr. Ross Swimmer
Secretary
Bureau of Indian Affairs
U. S. Department of Interior
1951 Constitution Avenue, N.W.
Washington, D. C. 20245

Dear Mr. Swimmer:

This is a formal request for forest development funds under 25 C.F.R. §163.25 for forest lands of the Passamaquoddy Tribe and Penobscot Nation.

Since 1980, the Passamaquoddy Tribe and the Penobscot Nation have acquired considerable amounts of forest land which is held in trust by the United States. Certain of these lands were cut over when they were acquired, and others have been cut since their acquisition. While some funds have been provided for timber harvesting, funds for timber stand improvement, reforestation, thinning, and other forest development needs have been woefully inadequate. Proper management and development of the Tribes' timber resource is essential to protect the resource and to provide the most beneficial return on the resource.

The Bureau of Indian Affairs is obligated to protect these resources. "The Federal Government has a trust responsibility to provide forest management under the principles of sustained yield and to protect Indian forest lands," according to the Bureau of Indian Affairs Fiscal Year 1986 Budget Justification Book ("United States Department of Interior Budget Justifications, F.Y. 1986, Bureau of Indian Affairs," p. 45)

The regulation pertaining to Forest Development funds appears in the "General Forest Regulations" section of Title 25 of the Code of Federal Regulations. It is broadly worded:

> This section pertains to the development of the forestry program which addresses the improvement of timber resources. The program shall consist of forestation, timber stand improvement work, and related investments that enhance productivity...Forest development funds will be used to establish, re-establish, maintain, and/or improve growth of desirable commercial timber species and stocking level.

25 C.F.R. §163.25. The needs of the Passamaquoddy Tribe and the Penobscot Nation fit squarely within this regulation. Funds are needed for a thorough assessment of forest development needs on tribal lands, and for the necessary forestry activities themselves. Timber stand improvement, forestation, and other forestry resource improvement programs are necessary to improve the Tribes' timber stock. Under this regulation, the Tribes appear to be clearly eligible for forest development funding.

In response to a request by Governor Newell of the Indian Township Reservation of the Passamaquoddy Tribe dated November 12, 1986 for information about how to apply for forest development funds (attached as Exhibit A), B. D. Ott, Director of the Eastern Area Office of the Bureau of Indian Affairs responded on December 8, 1986 that such funds were not available to the Passamaquoddy Tribe (attached as Exhibit B). The reason given for the refusal to provide funds was that the original forest development program authorized by Congress in fiscal year 1977, was limited to funds for a forest development backlog in existence at that time. Since the Passamaquoddy Tribe and Penobscot Nation did not begin to obtain trust lands until 1980, forest development funds could not be provided to them. This position was based on a memo dated July 20, 1979 from then Acting Deputy Commissioner Seneca (attached as Exhibit C).

We contend that forest development funds should be available to the Passamaquoddy Tribe and Penobscot Nation for improvement of our timber resources. Congress' original authorization was not limited to an existing backlog. The Report of the Committee on Appropriations of the 95th Congress in 1977 states that forest development funds are to be expended on newly acquired tribal lands, as well as existing

backlogs: "The Committee has added $6,600,000 above the budget estimate to continue a major program of reforestation and timber stand improvement begun last year...The increased forestry program level...will allow full implementation of the 10-year plan to liquidate the 912,000 acre backlog of forest development work in addition to keeping current with the 40,000 acre annual accrual." (Report No. 95-392, 95th Congress, 1st Session, accompanying H.R. 7636, pp. 43-44) (emphasis added). The intent of the Committee was not to limit forest development funds to the backlog but was also to fund new accruals which needed these funds, such as the Penobscot Nation and Passamaquoddy Tribe lands. On that basis alone, these funds should be made available to the Passamaquoddy Tribe and the Penobscot Nation.

The forest development program was reauthorized by Congress through the Bureau of Indian Affairs' budget for fiscal year 1987. Congress did not limit the reauthorization to the backlog existing in 1977. Rather, it appears that the Bureau of Indian Affairs has made the decision to limit the funds to forest development backlogs existing in 1977.

There is no justification to limit forest development funds to backlogs existing prior to 1977, absent Congressional intent to do so. It is arbitrary and contrary to the purposes of the program to limit the program to lands of tribes which had certain needs in 1977, when other tribes now have equally or more urgent needs. The Bureau's position punishes the Passamaquoddy Tribe and the Penobscot Nation for not having trust lands in 1977. This is unacceptable and contrary to the Federal trust responsibility towards tribal forest lands. The Bureau should exercise its responsibility by providing forest development funding.

Even if the Passamaquoddy Tribe and Penobscot Nation are not eligible for forest development funds under the "forest development program" specified in 25 C.F.R. §163.25, the Bureau is still required to exercise its trust responsibility towards tribal forest lands. Funds for forest development-type purposes should be provided under other programs to the Tribes. "[C]onsiderable funding for forest development is budgeted under the Tribe/Agency Operations program," according to "United States Department of the Interior Budget Justifications, F.Y. 1987, Bureau of Indian Affairs" (p. 130). The Tribe/Agency Operations Program has no geographical limitations and there is no basis to deny funding for improvement of the Tribes' timber resources under this program.

We respectfully urge you to provide forest development funds to the Passamaquoddy Tribe and the Penobscot Nation.

Sincerely yours,

The Honorable Melvin Francis

The Honorable Robert Newell

The Honorable James Sappier

cc: Mr. B. D. Ott
Mr. James Howe
Mr. Bruce Francis
Mr. John Banks

TESTIMONY OF DON PEASLEY,
CHAIRMAN, LAND AND FORESTRY COMMITTEE,
COLVILLE CONFEDERATED TRIBES,
ON S. 1289,
THE NATIONAL INDIAN FOREST AND WOODLAND ENHANCEMENT ACT,
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS,
OCTOBER 19, 1989

Mr. Chairman, members of the Select Committee on Indian Affairs, good afternoon. I am Don Peasley, representing the Confederated Tribes of the Colville Reservation, and it is my pleasure to appear before you to discuss S. 1289, the National Indian Forest and Woodland Enhancement Act.

Forest Resource Benefits

The Colville Reservation includes some 800,000 forested acres, of which 525,000 are capable of commercially producing timber. Our commercial timber harvest provides 8-10 million dollars annually for tribal revenues as well as supplying our tribal sawmill with timber. These same acres also provide many other valuable resources amenities to tribal members and the public at large, including employment opportunities in forest industries, cattle grazing, fish and wildlife, gathering of natural foods and medicines, and opportunities for recreation. Ours truly is a multiple resource forest.

Support for S. 1289

Because the forest resource is so important to our tribal members, we feel deeply about how it is managed and preserved. Current Federal statutes are few and inadequate in providing a clear understanding of Federal trust responsibility relating to management of future Indian forest lands. Because of the long term nature of forest management, it is essential that there be clear direction established in Federal statute to insure sound, stable management of Indian forests. Therefore the Confederated Tribes of the Colville Reservation are particularly pleased with the introduction and consideration of S. 1289, the National Indian Forest and Woodland Enhancement Act and fully support it. We do offer some suggested changes that we feel will help to

strengthen the bill and insure long term economic stability in Indian country.

Administrative Fees Deduction

There is great need for the stability and certainty of the administrative fees deduction as a source of Tribal commitment to the forest resource. Repeatedly these funds have been attacked by recent administrations as a source of budget cuts. It must be made clear that these monies are generated at the reservation level and are intended for re-investment in that particular reservation. Future forests require long term management, stability and commitment. This is something we must do, but it can only be accomplished if we have predictable funding available.

PROPOSED AMENDMENTS

Section 101. Findings

In this section we feel it important to make note of the fact that the workload of forest managers has continually increased with the adoption of Federal property management laws and the current public awareness of the need for Integrated Resource Management Planning. Today, within our own Tribal public, we address the need to carefully consider the impacts of every action we take, particularly as related to other than timber resources. It is essential that we have the ability and resources to properly address these issues.

Section 103. Definitions

In Subsection (4), the "Forest and Woodland management Activities" definition should be expanded to include forestry's participation in Integrated Resource Management Planning (IRMP). While this is not forestry's primary responsibility, there must be a key player to insure optimal resource allocation and management. This would best be added as a new activity (J).

Subsection (4A), fire protection, should be expanded to include prescribed fire management as a tool to be available for fire management. This is a well recognized tool that should be available on reservations to reduce the potential for catastrophic wildfire and accomplish resource management objectives

cost effectively.

Section 201. Management of Commercial Forests and Woodlands

Subsection (1): The phrase "including adequate provision for new forest and woodland growth as old growth is removed;" should be changed to read "including adequate reforestation and cultural treatments to insure new forest and woodland growth as forest growth is removed including, but not limited to second growth and old growth." This statement will eliminate any confusion over what is interpreted as "old growth".

Section 202. Administrative Fee Deduction

There are two areas that I feel need particular attention. First, the bill currently reads that administrative fees will be deducted from the gross receipts from all sales of Indian forest products. If strictly applied, administrative fees could be deducted not only on timber harvested but also from sales of finished lumber sold from tribal mills. This could have a devastating effect on the success of these tribal enterprises. I feel this should be clarified to read that deductions will be withheld from "initial sales off the land" of Indian forests. Second, the portion concerning how administrative fees can be spent that reads "timber sale administration or forest regeneration" should be changed to read "forest management activities" to better reflect the overall forest management needs that are specific to each reservation. This will better serve the needs of differing reservations.

Finally, I wish to state that we on the Colville Reservation do support the plight of our Native Alaskan brothers in their fight to be recognized by the Federal Government. It must be noted however that the solution to their needs is a new responsibility of the Federal Government and should not be thrown in to this bill at the expense of trust management to those tribes already recognized. Whatever commitment the Federal Government makes to the Alaskan Natives, it should not be made at the expense of the Tribes from the lower forty eight states.

STATEMENT OF STANLEY G. JONES, SR., CHAIRMAN
THE TULALIP TRIBES OF WASHINGTON
ON
S.1289, the "NATIONAL INDIAN FOREST
AND WOODLAND ENHANCEMENT ACT"
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
OCTOBER 19, 1989

Mr. Chairman and Members of the Committee, I appreciate the opportunity to express the views and recommendations of the Tulalip Tribes on this vital and timely Indian natural resource legislation. We wish to commend the sponsor of S.1289, Senator McCain, and the several co-sponsors, particularly, Senator Gorton from Washington State.

We believe that S.1289 can be viewed as a landmark bill within the context of Federal-Indian relations in that it provides a statutory base for the management, preservation and protection of a priceless Indian natural resource, i.e., Indian forests and woodlands. Also, the features of the bill that establish a responsible policy direction to administrative fees and provide for forestry education will contribute to improved public management of this Indian natural resource.

We have reviewed the testimony presented by the Intertribal Timber Council on S.1289 together with their recommended changes

to the bill. As an active member of the Council, the Tulalip Tribes endorse their testimony and proposed changes. We believe that such changes will go a long way towards strengthening S.1289 as an effective Indian policy tool.

It is important to distinguish our forestry program and circumstance on the Tulalip Reservation from those of most other reservations in the Pacific Northwest as a means to justify proposed amendments to the bill that will be discussed in concept form later in my statement.

Many of the reservations in the region contain valuable commercial timber stands that are included in the estimated 5.9 million acres of Indian-owned commercial forest lands. Those fortunate tribes in the region who own such lands enjoy revenues, employment, cultural and religious values, etc. from the lands. In our view, S.1289, if amended as recommended by the several witnesses, will establish an excellent public policy framework to permit the Bureau of Indian Affairs to provide sound management for the aforementioned Indian forest lands. The Bureau will be able to do so in a manner that is consistent with sound principles of resource management and that is in fulfillment of the United States' legal trust responsibility owing to Indian tribes and people.

3

Here on the Tulalip Reservation, we are confronted with circumstances that make our Indian forest lands atypical when compared with Indian forest lands elsewhere. Unfortunately, the once lush forest that covered our reservation was destroyed through wasteful and improper timber harvesting practices that would not be tolerated by responsible resource managers today. Regrettably, our Federal trustee was derelict in fulfilling his legal responsibilities to the Tribes during this period of destruction.

About a decade ago the Board of Directors of the Tulalip Tribes initiated a forestry program to restore our forest lands to their once lush state. The Board undertook this program with clear knowledge of its long-term implications --- perhaps 30-40 years before the seedlings would be mature for harvest; however, we were secure in the further knowledge that our efforts would prove to be beneficial for the future generations of the Tribes.

To carry out the forestry program, the Board created a separate tribal entity, the Tulalip Forest Enterprises. Since the initiation of our tribal forestry program, we have achieved the following results:

- 2300 acres of tribal and allotted lands have been converted from hardwood to conifer forest.

- Over 1,035,000 Douglas fir and 85,000 western red cedar trees have been planted on such lands.

- Twelve loggers and support staff work on a year around basis in the Program; two tribal truck operators enjoy substantial business by hauling logs to nearby mills; and nine tree planters are employed four months out of the year planting seedlings on and off the reservation.

- Tribal members harvest annually over 2500 cords of firewood from tribally and individually owned lands on the reservation. A significant share of this harvest is accomplished by families as a means of supplementing their income in the Fall and Winter months. Many reservation households use firewood as their primary source for heat throughout the Winter months.

The news article attached to my statement details the Board's commitment to see the Program through to fruition and describes the dedication of our Forest manager and staff.

Presently, we must look to the Bureau of Indian Affairs' limited funding to support our forestry program. We administer the Bureau funds pursuant to a P.L.93-638 contract. The Bureau's

present forestry program and funds are geared to those reservations where major commercial timber stands exist. Therefore, the amount of funds remaining to address the "Tulalip" type of Indian forest lands are necessarily limited. We cite this situation not as a compliant against our fellow Indian tribes, but as a justification for our recommendation of constructive amendments to S.1289 to remedy this public policy shortcoming.

We propose an amendment to Sec.201, Management of Commercial Forests and Woodlands, perhaps as a separate objective, that would clearly commit to the regeneration of those Indian forest lands which were destroyed, or all but destroyed, decades ago through actions beyond the control of the affected tribes. To determine the universe of such Indian forest lands, we propose further amendatory language that would mandate the Bureau of Indian Affairs to undertake a study, either directly or by contract, to identify these Indian forest lands and develop a cost estimate for appropriate forest regeneration. Finally, we propose amendatory language that would mandate the Bureau to formulate its annual forestry budget in a manner to include a separate line-item budget request for funds to address regeneration programs for the type of Indian forest lands found on the Tulalip Reservation and on other reservations as well.

Mr. Chairman, we are hopeful that you and the Committee will give favorable consideration to our proposed amendment concepts. The Board is prepared to make our staff and advisors available to work with the Committee staff in drafting language for the proposed amendments.

In conclusion, we urge the Committee to seek enactment of this important Indian bill prior to adjournment of the 101st Congress.

Walters, Jim. "Tulalip Plant Future Forests." Marysville Globe 99:15, p. 5, April 12, 1989.
[p. 1 of 3]

Tulalips plant future forests

By Jim Walters

The sky is dark gray, it's drizzling, the temperature is in the mid-40s. A few remnants of alder and maple are standing on some low, rolling hills covered mostly with brush. At one time a lush forest was here. In 30 or 40 years there will be another forest here—just as lush.

The reason why the forest will return is that crews from The Tulalip Tribes are involved in an ongoing reforestation program to put back on the land what was originally there.

They're doing it with a unique company they formed called Tulalip Forest Enterprises. Overseeing the company is Terry Grinaker, forestry manager of The Tulalip Tribes. Polite, soft-spoken, Grinaker is a University of Washington graduate in forestry, a former logger, studied to be a chef and served with the Army's 82nd Airborne in the Dominican Republic.

He was picked for his forest management job about ten years ago, when The Tulalip Tribes initiated a forestry program.

Since then, working with the Board of Directors of The Tulalip Tribes and coordinating with tribal members working for Tulalip Forest Enterprises, he has come to be proud of what has been accomplished.

"We have a state-of-the-art regeneration program that is putting back on the land what was originally there" Grinaker observes.

The uniqueness of Tulalip Forest Enterprises is that, unlike other reforestation operations, it is completely self-contained. The company includes a logging crew, a road building crew, a planting crew and a maintenance crew. With these multiple capabilities in one company, Tulalip Forest Enterprises is finding business not only on the reservation but throughout Snohomish and Skagit counties.

"We have some of the nicest tree plantations around," says Grinaker, "and it's mostly due to the dedication of the people in our program. Another part of it is due to the seedlings we use. They cost a little more, but they have higher survivability."

The seedlings used are grown from seed at Webster State Nursery near Olympia. After two years of growth, they are moved to a facility in Burlington, where they grow for another year before they are ready for planting.

Grinaker says the trees will be tended throughout their 30- or 40-year lifetime, which will include several thinnings, possible fertilization and, ultimately, harvest. Trees removed in the thinning process will be marketed and growth of the remaining trees will be enhanced due to the greater availability of soil nutrients and access to sunlight.

Members of the planting crew, under supervision of Bill Gobin, carry out the tedious, backbreaking job of scrambling up and down brush covered hills with 50-pound packs of seedlings on their backs, bending over every few yards to do a planting. A constant supply of rain and cold weather make it an extremely difficult job. But most of the crew members are used to it. Most are commercial fishermen who do this work in the off season. Grinaker says working on the crew not only teaches tribal members an alternate means of earning an income, but gives them a pride in being involved in regenerating the land.

"We have to think long-range and have foresight into the future to do work like this," says Grinaker. "It wouldn't be possible without the overwhelming support of The Tulalip Tribes and without the support of the Board of Directors. We are all very conscious of being good stewards of the land."

Walters, Jim. "Tulalip Plant Future Forests." Marysville Globe 99:15, p. 5, April 12, 1989.
[p. 2 of 3]

PLANTING SUPERVISOR—Bill Gobin, is supervisor of the tree planting crew for Tulalip Forest Enterprises, a reforestation company formed by The Tulalip Tribes that operates not only on the reservation, but throughout Snohomish County and into Skagit County.

Walters, Jim. "Tulalip Plant Future Forests." Marysville Globe 99:15, p. 5, April 12, 1989.
[p. 3 of 3]

TOUGH JOB—Despite rain, cold temperatures and thick brush, members of the Tulalip Forest Enterprises planting crew plant Douglas fir seedlings not only on The Tulalip Tribes reservation, but elsewhere in Snohomish and Skagit counties. The 150-seedling backpack worn by this tree planter weighs a hefty 50 pounds.

THE SAN CARLOS APACHE TRIBE

P.O. BOX 0
SAN CARLOS, ARIZONA 85550

(602) 475-2361

Buck Kitcheyan
Tribal Chairman

Ronald Edwards
Tribal Vice Chairman

October 16, 1989

The Honorable John McCain, Co-Chairman
Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Co-Chairman:

In regard to Senate Bill 1289, the "National Indian Forest and Woodland Enhancement Act", I would like to express on behalf of the San Carlos Apache Tribe our endorsement of the concept and the need for such a bill in an area that has been lacking in legislative direction and inadequate in financial support. The following is a brief synopsis of our forest and woodland management concerns as well as recommended changes or additions to S.B. 1289.

The San Carlos Apache Indian Reservation contains 840,810 acres of forest and woodlands, comprising approximately 47% of the reservation. Our reservation's natural resources are characteristically very diverse. This is especially true of our forest and woodlands which vary from ponderosa pine forests, with some of the most productive sites in the southwest, to vast areas of pinyon-juniper woodlands, to oak (encinal) savanhahs, to inland chaparral, to mesquite bajadas and bosques, to riparian cottonwood gallery forests. These areas are valued by us not only for their merchantable forest and woodland products such as timber and fuelwood but also for other products such as acorns, pinyon nuts, branches, bark, berries and other items that are important to the Apache culture. These lands also contain other resources and benefits such as water, fisheries, wildlife, recreation and aesthetics that are dependant upon the forest and woodlands or derived from them.

As you are aware, we have recently reestablished a sawmill enterprise on the reservation which will provide income to tribal members, stumpage receipts to the tribe as well as being a valuable management tool with which to improve the productivity of our forests. Senate Bill 1289 will be very important in providing the policy structure and financial support for the intensive and integrated management that is required under this higher level of use in order to meet the trust and fiduciary responsibility of the U.S. Government toward the San Carlos Apache Tribe.

In addition to the commercial forest resources there are the commercial woodland resources. However, in contrast to the commercial forest lands, no funding has ever been appropriated to manage the woodland resource on the reservation. With the growing populations of Phoenix and Tucson and the tightening restrictions on harvesting commercial fuelwood on the neighboring national forests, the demand for fuelwood from the reservation has skyrocketed. This has created both opportunities and problems for the tribe. We have promising opportunities in commercial wholesale and resale fuelwood enterprises. But without a staff to manage this resource the impact of unmanaged and unregulated harvesting would be environmentally expensive, resulting in a highgraded woodland resource with limited future commercial opportunity. However, the alternative of prohibiting commercial fuelwood harvesting carries a high and unnecessary (considering the size of the woodland resource that we have on the reservation) socio-economic cost to tribal members who have no other means of employment. The need for a soundly managed, sustainable woodland resource is recognized as a critical concern by the tribe and one in which S.B. 1289 will help provide for, so long as adequate funding is provided.

S.B. 1289. SEC. 103. DEFINITIONS

In Section 103. (5) we recommend that the word "commercial" be removed from the definition of "forest and woodland resources" as many of the benefits cited are also derived from noncommercial forest and woodlands (water, fisheries, wildlife, recreation, aesthetics, and traditional/cultural uses and values).

A problem with S.B. 1289 that needs to be addressed in the definitions section is the potential effect it will have on the lands that are transitional zones between forests and woodland. In the southwest these lands make up significant acreages. For example, land categorized as noncommercial timberland often includes accessible forested woodlands which have a submarginal forest cover but contain

significant merchantable woodland resources. These areas are usually the most productive woodland sites. However, under S.B. 1289 these lands could possibly remain classified as noncommercial forest and not be covered under this legislation. To prevent this from occurring we are recommending that a definition of noncommercial forest be included as follows:

> ( ) the term "noncommercial forest land" means Indian land that is forest land and not capable of bearing merchantable forest products, not perspectively accessible, not included in the commercial woodland base, or else land that has been withdrawn from the commercial base.

Consequently, the definition of commercial woodland would need to be redefined as:

> (3) the term "commercial woodland" means Indian land that is woodland that is capable of bearing merchantable products, currently or prospectively accessible, not withdrawn from such use, and not included in the commercial timberland base.

SEC. 201. MANAGEMENT OF COMMERCIAL FORESTS AND WOODLANDS

Under S. B. 1289, as it is currently written, management would be only applied to "commercial forest and woodlands". Although the management emphasis should correctly be placed on commercial lands (so long as the term commercial remains broadly defined), we strongly believe that the trust responsibility extends to the "noncommercial" forest and woodlands as well, and therefore the Act should also extend management guidelines into these areas. On the San Carlos Reservation these lands contain vast resources of value that are dependant upon forest and woodland cover. Proper management of these areas can maintain and enhance these resources, whereas the lack of management or the mismanagement could result in a decline or even the loss of these resources. For example, occasionally lands that meet the commercial forest or woodland criteria are administratively removed from these bases in order to enhance or protect other nonmerchantable uses or benefits or to meet goals and objectives other than producing merchantable forest and woodland products. This bill may have the effect of discouraging tribes from administratively removing land from the commercial bases because in effect they would be removing the land from management as well. This should not be the intent of this legislation.

SEC. 301. ESTABLISHMENT OF INDIAN FORESTRY EDUCATIONAL ASSISTANCE PROGRAMS

The San Carlos Apache Tribe has an established Tribal Forestry Program operating under P.L. 93-638. One of the primary goals of our program is for it to be composed primarily of professional foresters and technicians who are tribal members. Our main competitor for these employees happens to be the U.S. Government, particularly the BIA and the Forest Service. In order for tribal programs to be more competitive in the recruitment and retention of these individuals, the programs should also have an opportunity to use the forester intern, cooperative educational, and scholarship programs, or have similar programs of their own. For this reason I am suggesting the following change as one option:

> (a) Forester Intern Program. -(1) The Secretary shall establish and maintain in the Bureau of Indian Affairs at least 10 salaried forester intern positions for Indian Students and shall assist with the establishment and maintenance of a similar program of at least 10 salaried forester intern positions within the tribal forestry programs.

A second alternative to this is to add language to the bill that would allow tribal forestry program employees who are selected under the forester intern program the option of remaining tribal employees while under the internship program (funded through the Forester Intern Program).

In closing I would like to reemphasize the need for this legislation and to make the point that the best possible bill will not make a difference in the level or the quality of management of Indian forest and woodlands if programs remain inadequately funded.

Sincerely,

Tribal Chairman